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Peggy Bronson, Typesetting

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CHAPTER 1

MARRIAGE

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Part 1

General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

Cross-References

Obligations which cannot be specifically enforced — marriage promise, 27-1-412.

Cause of action for breach of promise abolished, 27-1-602.

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Contracts, Title 28, ch. 2 and 3.

Contracts in restraint of marriage generally void, 28-2-706.

What contracts must be in writing — marriage, 28-2-903.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure to termination of marriage, child custody, and support, 40-4-103.

Procedure — commencement — pleadings — abolition of existing defenses in termination of marriage, 40-4-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

Cross-References

Cause of action for breach of promise abolished, 27-1-602.

Parties to contracts, Title 28, ch. 2, part 2.

Contracts, Title 28, ch. 2 and 3.

Minors — power to contract, Title 41, ch. 1, part 3.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305.

Cross-References

Solemnization and registration — consent to marriage, 40-1-301.

Dissolution of marriage, Title 40, ch. 4, part 1.

Relinquishment of parental rights, 40-6-135.

Child legitimized by marriage of parents, 40-6-203.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Duty to furnish information, 50-15-108.

Marriage certificates, 50-15-301.

Part 2

License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146; amd. Sec. 1, Ch. 42, L. 1983.

Cross-References

Duties of Clerk of District Court, Title 3, ch. 5, part 5.

Discrimination in issuance of licenses prohibited, 49-3-204.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $30, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979; amd. Sec. 2, Ch. 493, L. 1981.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Prohibited marriages, 40-1-401.

Funding for battered spouses grant programs, 40-2-405.

Minors and adults defined, 41-1-101.

Marriage certificates, 50-15-301.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of health and environmental sciences, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by rule of the department to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test and that the report of the results of the serological test has been exhibited to the applicant tested and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983; amd. Sec. 1, Ch. 186, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "other person authorized by", substituted "rule of the department" for "laws of Montana" and after "a standard serological test" deleted "performed not more than 6 months before the date of issuance of the license".

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Declaration of invalidity, 40-1-402.

Minors and adults defined, 41-1-101.

Birth certificate to be filed, 50-15-201.

Serological test for syphilis, 50-18-104.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from a physician or other person authorized by rule of the department of health and environmental sciences to make such reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) (a) The certificate and statement shall be on a form to be provided and distributed, upon request, by the department of health and environmental sciences.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as the "certificate form".

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135; amd. Sec. 2, Ch. 154, L. 1983; amd. Sec. 2, Ch. 186, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause of (1) substituted "a physician or other person authorized by rule of the department of health and environmental sciences" for "the person in charge of the laboratory making the test or authorized"; deleted former (1)(b) that read: "(b) the date it was made"; in (1)(b) substituted "by rule of the department to sign the certificate" for "under the laws of Montana to make the test"; in (1)(c) substituted "the name and address of the laboratory performing the test" for "to whom the test was sent"; in (3)(a), after "distributed", inserted "upon request" and deleted end of subsection and subsections (i) and (ii) that read: "to all county clerks of the court in the state and to laboratories in this state that are:

(i) operated by the armed forces or the public health service of the United States; or

(ii) approved by the department"; and made minor change in punctuation.

Cross-References

Certificates, 50-15-109.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136; amd. Sec. 2, Ch. 228, L. 1981; amd. Sec. 1, Ch. 25, L. 1985; amd. Sec. 3, Ch. 186, L. 1989.

Compiler's Comments

1989 Amendment: After "serological test outside of Montana" deleted "if such tests are performed not more than 6 months before the issuance of a marriage license"; and at end, after "tests", deleted "and were performed not more than 6 months before the issuance of the marriage license".

Cross-References

Serological test for syphilis, 50-18-104.

40-1-206. Premarital test — approved laboratories — rules. (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity which is approved by the department of health and environmental sciences.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of health and environmental sciences.

(4) The department of health and environmental sciences shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137; amd. Sec. 3, Ch. 154, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Serological test for syphilis, 50-18-104.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.

Cross-References

Serological test for syphilis, 50-18-104.

Powers and duties of health officers, 50-18-107.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of health and environmental sciences to make a medical certificate, or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139; amd. Sec. 4, Ch. 154, L. 1983; amd. Sec. 4, Ch. 186, L. 1989.

Compiler's Comments

1989 Amendment: In (1), near beginning, substituted "rule of the department of health and environmental sciences" for "the laws of Montana"; and made minor change in punctuation.

Cross-References

Misdemeanors — classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Permissible release of information concerning infected persons, 50-18-109.

Violation a misdemeanor, 50-18-113.

40-1-209. Expenses. The department of health and environmental sciences shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for such expenses shall be submitted for approval and audit to the department of health and environmental sciences and shall be paid in accordance with law.

History: En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140.

Cross-References

Rules of Department binding, 50-18-105.

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.

Cross-References

Declaration of invalidity, 40-1-402.

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

History: En. Sec. 7, Ch. 232, L. 1963; R.C.M. 1947, 48-148.

40-1-212. Effective period of license. A license to marry is effective upon issuance and expires after 180 days.

History: En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307; amd. Sec. 1, Ch. 7, L. 1987.

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.

Cross-References

Minors and adults defined, 41-1-101.

Release of information by physician concerning pregnant minor, 41-1-402, 41-1-403.

Part 3

Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979; amd. Sec. 3, Ch. 348, L. 1985.

Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Voting corporate shares by proxy, 35-1-506.

Nonprofit corporations — voting by proxy, 35-2-507.

Form of application, license, marriage certificate, and consent, 40-1-107.

Powers of attorney, Title 72, ch. 5, part 5.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $30 and shall be paid to the clerk at time of filing.

History: En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979; amd. Sec. 2, Ch. 12, L. 1983.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Fee for filing declaration of marriage, 25-1-201.

Who may contract, 28-2-201.

Proof of age and medical certificate required, 40-1-203.

Validity of common-law marriage, 40-1-403.

Funding of battered spouses grant program, 40-2-405.

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.

Cross-References

Attorney certification, 37-61-206.

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.

Cross-References

Misdemeanor defined, 45-2-101.

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: (1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).

Cross-References

Clerk of Court — general duties, Title 3, ch. 5, part 5.

Manner of keeping records and storing documents, 7-4-2221.

Documents subject to recording, 7-4-2613.

Index to records of marriage certificates, 7-4-2619.

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.

Cross-References

Clerk of Court — duties generally, Title 3, ch. 5, part 5.

Definition and examples of disputable presumptions, 26-1-602.

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.

Cross-References

Validity of common-law marriage, 40-1-403.

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.

Cross-References

Officers who may administer oaths, 1-6-101, 3-1-402.

Duties of Clerk of Court, Title 3, ch. 5, part 5.

Validity of common-law marriage, 40-1-403.

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.

Cross-References

Presumption of legitimacy, 26-1-602.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Declaration of invalidity — vital statistics, 50-15-302.

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311.

Cross-References

County Attorney — other duties, 7-4-2717.

Presumption of legitimacy, 26-1-602.

Who may contract, 28-2-201.

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Proof of age and medical certificate required, 40-1-203.

Judicial approval, 40-1-213.

Defenses to divorce abolished, 40-4-105.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Revocation of provision for spouse in will by divorce or annulment, 72-2-322.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

Cross-References

Presumption of marriage, 26-1-602.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good-faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: **En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.**

Cross-References

"Good faith" defined, 30-1-201.

Obligation of good faith — U.C.C., 30-1-203.

Disposition of property, 40-4-202.

Maintenance, 40-4-203.

Child support, 40-4-204.

UPC — effect of divorce, annulment, or separation decree, 72-2-103.

UPC — unintentional omission of spouse or child, Title 72, ch. 2, part 6.

UPC — elective share of surviving spouse, Title 72, ch. 2, part 7.

CHAPTER 2

HUSBAND AND WIFE

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40-2-609. Enforcement when marriage void.
40-2-610. Limitation of actions.

Chapter Cross-References

Residence of spouses, 1-1-215.

Acknowledgment by married person, 1-5-206.

Tax law relating to family, 7-16-4105, 15-6-201, 15-7-307, 15-10-103, 15-30-112, 15-30-113, 15-30-122, 15-30-123, 15-30-134, 15-30-142.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-3-1301, 19-3-1302.

Civil procedure provisions relating to families, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgment when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

When appeal may be taken, Rule 1(c), M.R.App.P., (see Title 25, ch. 21).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No cause of action for alienation of affections, 27-1-601.

Contracts — what constitutes duress, 28-2-402, 28-2-403.

Agreement to marry to be in writing, 28-2-903.

Assignment of wages by married person, 31-1-306.

Labor law concerning family members, 31-1-306, 39-1-102 through 39-1-104, 39-2-101, 39-3-201, 39-3-203, 39-3-204, 39-3-406, 39-6-101, 39-6-102, 39-7-103; Title 39, ch. 7, part 2; 39-33-101 through 39-33-103, 53-7-201, 53-7-202.

Banking law concerning husband and wife, 32-1-107, 32-1-442.

Insurable interest, Title 33, ch. 15, part 2.

Nursing by members of family, 37-8-103.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2301 through 39-51-2308.

Workers' compensation law relating to families, 39-71-116 through 39-71-120, 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

General criminal provisions relating to families, 45-1-205, 45-2-101, 45-2-211.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-3-204, 46-16-212, 46-23-1022, 46-23-1102.

Human Rights, Title 49.

Discrimination based on marital status, 49-2-303, 49-3-103;.

Discrimination in insurance and retirement plans prohibited, 49-2-309.

Reporting of death, marriages, divorces, annulments, etc., 50-15-108.

General welfare provisions relating to the family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Automobile registration may be transferred to heir without letters of administration — when, 61-3-201.

Property law concerning husband and wife, 70-1-306, 70-1-307, 70-1-314, 70-1-404, 70-1-420, 70-1-422, 70-15-303, 70-20-106, 70-20-107.

Homesteads, Title 70, ch. 32.

Distribution of estate property, Title 72, ch. 3, part 9.

Housing Act of 1975, Title 90, ch. 6.

Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

Cross-References

Spousal privilege, 26-1-802.

How obligations arise, 28-1-102.

Contracts, Title 28, ch. 2, parts 2 and 3.

Competency of spouses, 46-16-212.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.

Cross-References

When husband's and wife's interests separate, 40-2-201.

Earnings and accumulations — same — when separated, 40-2-206.

Nonsupport, 45-5-621.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.

Cross-References

Cases in which property may be attached, 27-18-101.

Agency, Title 28, ch. 10.

"Good faith" defined, 30-1-201.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.

Cross-References

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Separation agreement, 40-4-201.

Nonsupport, 45-5-621.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Property joint tenancy and tenancy in common, Title 70, ch. 1, part 3.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.

Cross-References

Judgment for or against married person, 25-9-102.

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Obligations of parents for the support and education of their children, 40-6-211.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.

Cross-References

Capacity of married person to be a party, 25-5-201.

Who may defend when spouse sued, 25-5-202.

Judgment for or against married person, 25-9-102.

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Cause of action for alienation of affections abolished, 27-1-601.

Testimony of spouse admissible in promotion of prostitution cases, 45-5-604.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.

Cross-References

Personal representative — powers and duties, Title 72, ch. 3, part 6; Title 72, ch. 12, part 5.

Conservators generally, Title 72, ch. 5, parts 1 and 4.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Trust administration, Title 72, ch. 34.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Cross-References

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Liability, Title 27, ch. 1, part 7.

Duty of care, 28-1-201.

Part 2

Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.

Cross-References

Acknowledgment by married person, 1-5-206, 1-5-207.

Dissolution — disposition of property, 40-4-202.

Transfer of property, Title 70, ch. 1, part 5; Title 70, ch. 20.

Married persons — execution of power in respect to real property, 70-15-303.

Power of attorney of married person — how acknowledged, 70-20-107.

Power of attorney, estates and probate proceedings, Title 72, ch. 5, part 5.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.

Cross-References

Acknowledgment by married person, 1-5-206.

Documents subject to recording, 7-4-2613.

Action for quieting title to personal property, 70-2-201.

Partition of personal property, 70-2-211.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Separation agreement, 40-4-201.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

Cross-References

Assignment of wages by married person, 31-1-306.

Payment of wages generally, 39-3-204.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

Cross-References

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Liability for acts or debts of spouse, 40-2-106.

Allowance to parent, 40-6-212.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

Cross-References

Judgments for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

When parent liable for necessaries supplied to child, 40-6-215.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Part 3

Power of Married Persons to Contract

Part Cross-References
Contracts, Title 28, ch. 2 and 3.

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

Cross-References
Acknowledgment by married person, 1-5-206.
Form of certificate of acknowledgment by married person, 1-5-207.
Who may contract, 28-2-201.
Mutual obligations of husband and wife, 40-2-101.
Separation agreement, 40-4-201.
Grant by married person — how acknowledged, 70-20-106.
Power of attorney of married person — how acknowledged, 70-20-107.
Trust code, Title 72, ch. 33 through 36.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

Cross-References
Judgment for or against married person, 25-9-102.
Liability for acts or debts of spouse, 40-2-106.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

Cross-References
What is unlawful, 28-2-701.
Contracts which violate policy of the law — exemption from responsibility, 28-2-702.
Restraints upon legal proceedings void, 28-2-708.
What contracts must be in writing, 28-2-903.
Legal separation, 40-4-104.
Separation agreement, 40-4-201.
Waiver of rights by spouse, 72-2-102.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

Cross-References

What constitutes good consideration, 28-2-801.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by parts 1 through 3 of this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.

Cross-References

Separation agreement, 40-4-201.

Disposition of property, 40-4-202.

40-2-312. Marriage settlement contracts — how executed. Except as provided in part 6 of this chapter, all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123; amd. Sec. 11, Ch. 189, L. 1987.

Cross-References

Acknowledgment by married person, 1-5-206, 1-5-207.

What contracts must be in writing, 28-2-903.

Separation agreement, 40-4-201.

Grant by married person — how acknowledged, 70-20-106.

40-2-313. Repealed. Sec. 14, Ch. 189, L. 1987.

History: En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.

40-2-314. Effect of recording. Except as provided in part 6 of this chapter, the recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125; amd. Sec. 12, Ch. 189, L. 1987.

Cross-References

Effect of recording, Title 70, ch. 21, part 3.

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.

Cross-References

Minor cannot disaffirm certain obligations, 41-1-306.

Part 4

Battered Spouses Grant Programs

Part Cross-References

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Criminal offense of domestic abuse, 45-5-206.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

40-2-401. Battered spouses and domestic violence grant program created. There is a grant program established within the department of family services for the allocation of grant money to local battered spouses and domestic violence programs.

History: En. Sec. 1, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987.

40-2-402. Duties of department. The department of family services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: En. Sec. 5, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-2-403. Authorized grantees — criteria for grants. (1) The department of family services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

History: En. Sec. 3, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987.

40-2-404. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of family services according to regional boundaries established by the department.

History: En. Sec. 4, Ch. 677, L. 1979; amd. Sec. 3, Ch. 493, L. 1981; amd. Sec. 11, Ch. 609, L. 1987.

40-2-405. Funding. (1) Revenue from the marriage license fee, the fee collected for filing a declaration of marriage without solemnization, and the portion of fines allocated to this program by 46-18-235 is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 2, Ch. 677, L. 1979; amd. Sec. 4, Ch. 493, L. 1981; amd. Sec. 3, Ch. 12, L. 1983; amd. Sec. 2, Ch. 553, L. 1987.

Cross-References

Marriage license issuance — fee, 40-1-202.

Declaration of marriage without solemnization — fee, 40-1-311.

Part 5 reserved

Part 6

Uniform Premarital Agreement Act

40-2-601. Short title. This part may be cited as the "Uniform Premarital Agreement Act".

History: En. Sec. 1, Ch. 189, L. 1987.

40-2-602. Application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 2, Ch. 189, L. 1987.

40-2-603. Definitions. As used in this part, the following definitions apply:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

History: En. Sec. 3, Ch. 189, L. 1987.

40-2-604. Formalities. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

History: En. Sec. 4, Ch. 189, L. 1987.

40-2-605. Content. (1) Parties to a premarital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them, whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

History: **En. Sec. 5, Ch. 189, L. 1987.**

40-2-606. When agreement becomes effective. A premarital agreement becomes effective upon marriage.

History: **En. Sec. 6, Ch. 189, L. 1987.**

40-2-607. Amendment — revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

History: **En. Sec. 7, Ch. 189, L. 1987.**

40-2-608. Enforcement. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

History: **En. Sec. 8, Ch. 189, L. 1987.**

40-2-609. Enforcement when marriage void. If a marriage is declared invalid, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

History: **En. Sec. 9, Ch. 189, L. 1987.**

40-2-610. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

History: En. Sec. 10, Ch. 189, L. 1987.

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
40-3-104. Application.
40-3-105 through 40-3-110 reserved.
40-3-111. Conciliation court — jurisdiction.
40-3-112. Selection of judges.
40-3-113. Transfer of cases.
40-3-114. Budget.
40-3-115. Probation officers' duties.
40-3-116. Privacy of hearings.
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40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.
40-3-126. Orders — reconciliation agreement.
40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect.

Part 1

Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).

Cross-References

Rights and obligations of minors, Title 41, ch. 1.

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).

Cross-References

District Court — powers respecting conduct of business, 3-1-111.

District Court — means to carry jurisdiction into effect, 3-1-113.

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: (1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).

Cross-References

District Court — jurisdiction, Art. VII, sec. 4, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

Child abuse, neglect, and dependency — jurisdiction and venue, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

Cross-References

Transfer when judge unable to hear motion or return of order, 25-4-102.

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

Cross-References

Probation officers — appointment and supervision, 41-5-201, 41-5-701.

Powers and duties of probation officers, 41-5-401, 41-5-703.

Qualifications of probation officers, 41-5-702.

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the

matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: **En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).**

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of
....
Petitioner

Petition for Conciliation
(Under the Conciliation
Court Law)

And concerning
....and
....
Respondents.

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation

court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

Cross-References

Fees of Clerk of District Court, 25-1-201.

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the

parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).

Cross-References

General rules regarding procedure, Title 3, ch. 1, part 3.

Sittings of court — when private, 3-1-313.

Terms and location of District Court, 3-5-401.

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).

40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, declaration of invalidity, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, declaration of invalidity, or separate maintenance. The pendency of a dissolution, declaration of invalidity, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, declaration of invalidity, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or declaration of invalidity of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12); amd. Sec. 169, Ch. 575, L. 1981.

Cross-References

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Maintenance, 40-4-203.

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 1 — Separation—Dissolution of Marriage

40-4-101. Purposes.
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40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.
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40-4-220. Affidavit practice.
40-4-221. Determination of custody upon death of custodial parent.
40-4-222. Declaration of legislative intent — joint custody.
40-4-223. Award of joint or separate custody.
40-4-224. Joint custody — modification — consultation with professionals.
40-4-225. Access to records by noncustodial parent.

Chapter Cross-References

Proper place of trial — county in which petitioner has resided 90 days preceding the commencement of the action, 25-2-118.

Part 1

Separation — Dissolution of Marriage

Part Cross-References

Court proceedings may be private in divorce action, 3-1-313.

When divorce terminates right of interment, 35-21-420.

Displaced Homemaker Program, Title 39, ch. 7, part 3.

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

Cross-References

Montana Conciliation Law, Title 40, ch. 3, part 1.

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure, 40-1-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316; amd. Sec. 1, Ch. 392, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

Conciliation proceedings — effect on other proceedings, 40-3-127.

Support, custody, visitation, and related provisions, Title 40, ch. 4, part 2.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: **En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.**

Cross-References

Residence — rules for determining, 1-1-215.

Court proceeding may be private in divorce action, 3-1-313.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20.)

Application of Montana Rules of Civil Procedure, 40-1-105.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Montana Conciliation Law, Title 40, ch. 3, part 1.

Recordation of marriage, 50-15-301.

40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: **En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.**

Cross-References

Cause of action for alienation of affections abolished, 27-1-601.

Conciliation court — jurisdiction, 40-3-111.

Privacy of hearings, 40-3-116.

Manner of conciliation, 40-3-124.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328.

Cross-References

Clerk of Court — general duties, 3-5-501.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Change of name, Title 27, ch. 31.

When divorce terminates right of interment, 35-21-420.

Decree of dissolution — vital statistics, 50-15-302.

Revocation of provision for spouse in will by divorce or annulment, 72-2-322.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

Visitation, 40-4-217.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Representation of child, 40-4-205.

Modification, 40-4-219.

40-4-111 through 40-4-120 reserved.

40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981; amd. Sec. 4, Ch. 526, L. 1985; Sec. 40-4-106, MCA 1983; redes. 40-4-121 by Code Commissioner, 1985.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

How preventive relief is given, 27-1-403.

When preliminary injunction may be granted, 27-19-201.

Procedure for obtaining preliminary injunction, Title 27, ch. 19, part 3.

Battered spouses grant program, Title 40, ch. 2, part 4.

Temporary custody orders, 40-4-213.

Criminal offense of domestic abuse, 45-5-206.

Sexual intercourse without consent, 45-5-503.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Circumstances in which a peace officer may make arrests, 46-6-401.

Written report when no arrest made in domestic violence situation, 46-6-421.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

Bringing arrested person before a court, 46-7-101.

Bail — exception for domestic abuse, 46-9-302.

40-4-122. Forms — distribution — filing. The attorney general shall prepare uniform sample instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, justices of the peace, city, and municipal courts shall make forms available to the public at no charge.

History: En. Sec. 5, Ch. 526, L. 1985; amd. Sec. 2, Ch. 208, L. 1989.

Compiler's Comments

1989 Amendment: In last two sentences inserted references to City Courts.

40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-121(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

History: En. Sec. 6, Ch. 526, L. 1985; amd. Sec. 3, Ch. 208, L. 1989.

Compiler's Comments

1989 Amendment: In (1) inserted reference to City Courts; and in (2), in first sentence, inserted reference to City Court Judge.

Cross-References

Montana Justice Courts Rules of Civil Procedure, M.J.C.R.Civ.P., Title 25, ch. 22.

Appeal to District Court from Justice's Court, Rule 20, M.J.C.R.Civ.P. (see Title 25, ch. 22).

Procedure in Municipal Courts, Title 25, ch. 30.

Procedure in Justices' Courts, Title 25, ch. 31.

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Child custody, 40-4-211 through 40-4-225.

Violation of protective order a misdemeanor, 45-5-626.

40-4-124. Review or removal — district court. (1) An order issued by a municipal court, justice court, or city court pursuant to 40-4-121(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, justice court, or city court made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court, justice court, or city court pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal.

History: En. Sec. 7, Ch. 526, L. 1985; amd. Sec. 4, Ch. 208, L. 1989.

Compiler's Comments

1989 Amendment: Inserted three references to City Court.

Cross-References

Appeal to District Court from Justice's Court, Rule 20, M.J.C.R.Civ.P. (see Title 25, ch. 22).

40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

History: En. Sec. 8, Ch. 526, L. 1985; amd. Sec. 5, Ch. 208, L. 1989.

Compiler's Comments

1989 Amendment: In (1) inserted reference to City Court Judge.

Cross-References

Violation of protective order a misdemeanor, 45-5-626.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

What acts or omissions are contempts, 3-1-501.

Procedure — contempt not in presence of the court, 3-1-512.

Imprisonment to compel performance, 3-1-520.

Judgments, Title 25, ch. 9.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Execution of judgment, Title 25, ch. 13.

Breach of contract, 27-1-311.

Specific and preventive relief, Title 27, ch. 1, part 4.

Unconscionable contract or clause, 30-2-302.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Consideration for separation, 40-2-304.

40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions;

whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

(5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321; amd. Sec. 1, Ch. 613, L. 1983; amd. Sec. 13, Ch. 189, L. 1987.

Cross-References

Individual income tax, Title 15, ch. 30.

Duties of husband and wife as to support, 40-2-102.

Individual property, Title 40, ch. 2, part 2.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Property rights of husband and wife — how governed, 40-2-311.

Marriage settlement contracts — how executed, 40-2-312.

Dissolution of marriage — legal separation, 40-4-104.

Best interest of children, 40-4-212.

Trust code, Title 72, ch. 33 through 36.

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: **En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.**

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for maintenance, 25-13-614.

Individual property, Title 40, ch. 2, part 2.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

40-4-204. Child support — orders to address health insurance — automatic withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209,

unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Except as provided in subsection (5)(b), each district court judgment, decree, or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment, decree, or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (5)(a), the clerk of court shall immediately forward a copy of the order to the department.

(e) If an obligor is not subject to income withholding or is exempted from income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(6) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323; amd. Sec. 1, Ch. 590, L. 1983; amd. Sec. 1, Ch. 727, L. 1985; (3)En. Sec. 1, Ch. 434, L. 1985; (4)En. Sec. 1, Ch. 651, L. 1985; amd. Sec. 1, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 550 in (2)(f) substituted "provided in Title 53, chapter 4, part 2" for "as defined in 53-2-702". Amendment was voided by sec. 30, Ch. 702, L. 1989, so it has not been codified.

Chapter 702 in (1), after "court", substituted "shall" for "may"; at beginning of (2) inserted "The court shall consider"; in (2)(d) substituted "educational and medical needs" for "educational needs"; in (2)(f) inserted "the age of the child" and deleted "for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702"; inserted (2)(g) relating to cost of day care; inserted (2)(h) relating to custody arrangements; inserted (2)(i) relating to needs of other persons a parent is obligated to support; inserted (3)(a) requiring application of standards and guidelines; inserted (3)(b) relating to findings required for nonapplication of standards and guidelines; inserted (5)(a) requiring automatic income withholding; inserted (5)(b) relating to circumstances when income is not subject to automatic withholding; inserted (5)(c) requiring application for and immediate implementation of automatic income withholding; inserted (5)(d) relating to sending of court order to the Department; in (5)(e) substituted "If an obligor is not subject to income withholding or is exempted from income withholding, the district court judgment or order" for "Each district court judgment or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing order for child support entered after October 1, 1985"; inserted (6) relating to a warning statement concerning required health insurance coverage; and made minor changes in form and phraseology.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for support, 25-13-614.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.
Enforcement of support, Title 40, ch. 5.
Judgment or order — parent and child relationship, 40-6-116.
Obligations of parents, Title 40, ch. 6, part 2.
Allowance to parent, 40-6-212.
Remedy when parent dies without providing for support of child, 40-6-213.
Custody, services, and earnings of child, 40-6-221.
Parental control over property of child, 40-6-232.

40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979.

Cross-References
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Costs — attorney's fees, 40-4-110.
Enforcement of minor's rights, 41-1-202.

40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325; amd. Sec. 1, Ch. 532, L. 1985.

Cross-References
Contempts, Title 3, ch. 1, part 5.
Duties of Clerk of Court, 3-5-501.
Assignment of right to periodic installments for certain future damages, 25-9-405.
Order of support, 40-5-125.
Additional powers of responding court, 40-5-127.
Paternity — enforcement of judgment or order, 40-6-117.
Duties of trustees, Title 72, ch. 34, part 1.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Property exempt from execution — earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Powers of trustees, Title 72, ch. 34, part 3.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of social and rehabilitation services, whenever the department of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979; amd. Sec. 1, Ch. 212, L. 1987; amd. Sec. 27, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 549 inserted (2)(b)(iii) relating to Department of Revenue applications and support modifications.

Chapter 702 in (2)(b)(iii) substituted "department of social and rehabilitation services" for "department of revenue". Amendment effective July 1, 1989.

Cross-References

Unconscionable contract or clause, 30-2-302.

Temporary order or temporary injunction, 40-4-121.

Remedy when parent dies without providing for support of child, 40-6-213.

Minors and adults defined, 41-1-101.

Claims against decedent, 72-3-104.

Creditors' claims, Title 72, ch. 3, part 8.

40-4-209. Security or guaranty to secure support. (1) Upon verified application by a person authorized to enforce or collect a child support obligation the department of family services or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of social and rehabilitation services shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of social and rehabilitation services determines an application for an order requiring security is not appropriate, it may not request the order.

History: En. Sec. 1, Ch. 521, L. 1985; amd. Sec. 98, Ch. 370, L. 1987; amd. Sec. 26, Ch. 609, L. 1987; amd. Sec. 20, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1), before "the department of family services", deleted "the department of revenue"; and in (5), in two places, substituted "department of social and rehabilitation services" for "department of revenue". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Evidence on motions, Rule 43(e), M.R.Civ.P. (see Title 25, ch. 20).

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Mortgages, Title 71, ch. 1.

40-4-210. Child support jurisdiction — nonresident parent. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident parent in a child support determination in the initial or modification decree if:

(1) the nonresident parent has resided with the child in this state;

(2) (a) the nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and

(b) the other party to the marital relationship or the child resides within this state;

(3) the child was conceived or adopted within this state when at least one parent was a resident; or

(4) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

History: **En. Sec. 1, Ch. 459, L. 1989.**

40-4-211. Child custody jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: **En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.**

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

When custody may be awarded without dissolution proceedings, 40-6-224.

Uniform Child Custody Jurisdiction Act — jurisdiction, 40-7-104.

Jurisdiction and venue — abused, neglected, and dependent youths, 41-3-103.

40-4-212. Best interest of child. (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to his custody;

(b) the wishes of the child as to his custodian;

(c) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(d) the child's adjustment to his home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

History: **En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332; amd. Sec. 1, Ch. 379, L. 1987; amd. Sec. 1, Ch. 303, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (2) that read: "(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219"; and made minor changes in form.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Guardians of minors, Title 72, ch. 5, part 2.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of

40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Custody of children where husband and wife living separately, 40-6-222.

When custody may be awarded without dissolution proceedings, 40-6-224.

Declaration of purpose of Youth Court Act, 41-5-102.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.

Cross-References

Sittings of court — when private, 3-1-313.

Court reporters — duties, 3-5-603.

Expert witnesses' fees, 26-2-505.

Expert witness, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

What constitutes undue influence, 28-2-407.

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits. The cost of the investigation and report shall be paid according to the final order.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained

if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981; amd. Sec. 1, Ch. 624, L. 1987.

Cross-References

Expert witnesses, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

Consent in general, Title 28, ch. 2, part 3.

When parent may bring action for the exclusive control of the children — decree, 40-6-223.

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Sittings of court — when private, 3-1-313.

Costs, Title 25, ch. 10.

Allowable costs, Title 25, ch. 10, part 2.

Costs — attorney's fees, 40-4-110.

Hearings and studies in another state — orders to appear, 40-7-120.

Priority of custody proceedings, 40-7-125.

40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625.

History: **En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979; amd. Sec. 1, Ch. 509, L. 1987; amd. Sec. 1, Ch. 405, L. 1989.**

Compiler's Comments

1989 Amendment: In (3), at end, inserted reference to subsection (6); inserted (6) establishing procedure whereby custodial parent or guardian may file objection to visitation right of other parent convicted of certain serious crimes and placing burden on convicted parent to prove visitation with convicted person does not seriously endanger child's health and modification of visitation is not in child's best interest; and made minor change in grammar.

Cross-References

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Grandparent visitation rights, 40-9-102.

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the department of family services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: **En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338; amd. Sec. 12, Ch. 609, L. 1987.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Obligations of parents for the support and education of their children, 40-6-211.

Right of parent to determine the residence of child, 40-6-231.

Endangering the welfare of children, 45-5-622.

Child welfare services, Title 53, ch. 4, part 1.

40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent shall have 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979; amd. Sec. 1, Ch. 449, L. 1983; amd. Sec. 2, Ch. 509, L. 1987; amd. Sec. 2, Ch. 303, L. 1989; amd. Sec. 2, Ch. 405, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 303 inserted (2) that read: "(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212"; inserted (7) that read: "(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding"; and made minor changes in form.

Chapter 405 In (3), at end, inserted reference to subsection (8); and inserted (8) establishing procedure whereby parent or person granted custody may file objection to current custody right of parent convicted of certain serious crimes and placing burden on convicted parent to prove custody by convicted parent does not seriously endanger child's health and modification of custody is not in child's best interest.

Cross-References

Costs — attorney's fees, 40-4-110.

Modification of custody decree of another state, 40-7-115.

Custodial interference, 45-5-304.

Endangering the welfare of children, 45-5-622.

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Information under oath to be submitted to the court, 40-7-110.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection (2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

Cross-References

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

40-4-222. Declaration of legislative intent — joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of 40-4-222 through 40-4-225 is to establish certain guidelines for resolution of custody disputes.

History: En. Sec. 1, Ch. 416, L. 1981.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-223. Award of joint or separate custody. (1) In custody disputes involving both parents of a minor child, the court shall award custody according to the best interests of the child as set out in 40-4-212:

(a) to both parents jointly; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or

(b) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex.

(2) In making an award, the court shall require the submission of a plan for the implementation of the custody order.

(3) In making an award, the court shall state in its decision the reasons and factors considered in making the award.

History: En. Sec. 2, Ch. 416, L. 1981; amd. Sec. 2, Ch. 727, L. 1985.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interest of a child, nor is a finding that the parents are hostile to each other. However, a finding that one parent physically abused the other parent or the child is a sufficient basis for finding that joint custody is not in the best interest of the child.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the

physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between the parents must be as equal as possible; however:

(a) each case shall be determined according to its own practicalities, with the best interest of the child as the primary consideration; and

(b) when allotting time between the parents, the court shall consider the effect of the time allotment on the stability and continuity of the child's education.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

History: En. Sec. 3, Ch. 416, L. 1981; amd. Sec. 1, Ch. 496, L. 1985; amd. Sec. 3, Ch. 727, L. 1985; amd. Sec. 2, Ch. 379, L. 1987; amd. Sec. 1, Ch. 365, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2)(b) requiring court to consider effect of time allotment on stability and continuity of child's education; and made minor changes in form.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

Obligations of parents for education of child, 40-6-211.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-225. Access to records by noncustodial parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

History: En. Sec. 4, Ch. 416, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

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CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Reciprocal Enforcement of Support Act

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Part 1

Uniform Reciprocal Enforcement of Support Act

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Support of spouse, 40-2-103.

Child support, 40-4-204.

Registration and enforcement of interstate income withholding orders, 40-5-431 through 40-5-434.

40-5-101. Short title. This part may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)".

History: **En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82.**

40-5-102. Purposes. The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: **En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.**

40-5-103. Definitions. (1) "Court" means the district court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this part.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "Register" means to file in the registry of foreign support orders.

(10) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(11) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(12) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.

(13) "Responding court" means the court in which the responsive proceeding is commenced.

(14) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(15) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: **En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42.**

40-5-104. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: **En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43.**

Cross-References

What acts or omissions are contempts, 3-1-501.

Warnings of withholding procedures, 40-4-204.

Payment of maintenance or support to court, 40-4-206.

Assignments, 40-4-207.

Security or guaranty to secure support. 40-4-209.

Remedy when parent dies without providing for support, 40-6-213.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-5-105. Extent of duties of support. Duties of support arising under the law of this state, when applicable under 40-5-108, bind the obligor present in this state regardless of the presence or residence of the obligee.

History: **En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.**

Cross-References

Residence — rules for determining, 1-1-215.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Child support, 40-4-204.

Obligations of parents for the support and education of their children, 40-6-211.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-5-106. Interstate rendition. The governor of this state may:

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: **En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-107. Conditions of interstate rendition. (1) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: **En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-108. Choice of law. Duties of support applicable under this part are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: **En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-109. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.

Cross-References

Substitution of successor to public officer, Rule 25(d), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-110. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

Married persons may sue and be sued, 40-2-107.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Remedy when parent dies without providing for support of child, 40-6-213.

Civil action to enforce duty to support parent, 40-6-303.

40-5-111. Jurisdiction. Jurisdiction of any proceeding under this part is vested in the district court.

History: En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.

Cross-References

Means to carry jurisdiction into effect, 3-1-113.

District Court — original jurisdiction, 3-5-302.

40-5-112. Contents and filing of petition for support — venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services and the department of family services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support

order in some other proceeding and has retained jurisdiction for its enforcement.

History: **En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979; amd. Sec. 27, Ch. 609, L. 1987.**

Cross-References

Rules for determining residence, 1-1-215.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of family services, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: **En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52; amd. Sec. 1, Ch. 189, L. 1981; amd. Sec. 28, Ch. 609, L. 1987; amd. Sec. 21, Ch. 702, L. 1989.**

Compiler's Comments

1989 Amendment: Before "the department of family services" deleted "the department of revenue". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

General duties of Attorney General, 2-15-501.

Department of Revenue — powers and duties regarding collection of support debt, 40-5-202.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-114. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: **En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.**

Cross-References

Enforcement of minor's rights, 41-1-202.

Minor cannot disaffirm certain obligations, 41-1-306.

40-5-115. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: **En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-116. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: **En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.**

Cross-References

Fees of Clerk of District Court, 25-1-201.

Costs, Title 25, ch. 10.

40-5-117. Jurisdiction by arrest. If the court of this state believes that the obligor may flee, it may:

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: **En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.**

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Arrest and bail in civil actions, Title 27, ch. 16.

Giving bail — civil actions, Title 27, ch. 16, part 4.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-118. State information agency. (1) The state department of social and rehabilitation services is designated as the state information agency under this part.

(2) It shall:

(a) compile a list of the courts and their addresses in this state having jurisdiction under this part and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax

offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57.

Cross-References

Powers and duties of Department of Social and Rehabilitation Services, 53-2-201.

40-5-119. Duty of the court and officials of this state as responding state. (1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58.

Cross-References

Attorney General — general duties, 2-15-501.

Docket, 3-5-508.

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-120. Further duties of court and officials in the responding state. (1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

History: **En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

General duties of Clerk of the District Court, 3-5-501.

Duties of County Attorneys related to state matters, 7-4-2716.

Effect of judgment of final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-121. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: **En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.**

Cross-References

Depositions — persons before whom taken generally, Rule 28, M.R.Civ.P. (see Title 25, ch. 20).

40-5-122. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: **En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.**

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Perjury, 45-7-201.

False swearing, 45-7-202.

40-5-123. Husband and wife communications not privileged. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: **En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.**

Cross-References

Spousal privilege, 26-1-802.

40-5-124. Rules of evidence — application. In any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (40-5-128) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: **En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.**

Cross-References

Judgments for money or the possession of property, 25-13-201.

Effect of foreign judgment, 26-3-205.

Montana Rules of Evidence, Title 26, ch. 10.

Custodial interference, 45-5-304.

40-5-125. Order of support. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding state. The clerk may charge a handling fee in accordance with 40-4-206. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: **En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64; amd. Sec. 2, Ch. 532, L. 1985.**

Cross-References

Payment of maintenance or support to court, 40-4-206.

Department of Revenue — powers and duties regarding collection of support debt, 40-5-202.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-126. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: **En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-127. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: **En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Payment of maintenance or support to court, 40-4-206.

40-5-128. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

History: En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.

Cross-References

How parent and child relationship established, 40-6-104.

40-5-129. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-130. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-131. Proceedings not to be stayed — when. A responding court may not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.

Cross-References

Stay on motion for new trial or for judgment, Rule 62(b), M.R.Civ.P. (see Title 25, ch. 20).

40-5-132. Application of payments. A support order made by a court of this state pursuant to this part does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: **En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-133. Effect of participation in proceeding. Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: **En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72.**

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

40-5-134. Intrastate application. This part applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: **En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judgment or final order — when conclusive, 26-3-201.

40-5-135. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(2) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: **En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.**

Cross-References

From what judgment or order an appeal may be taken, Rule 1, M.R.App.P. (see Title 25, ch. 21).

40-5-136. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: **En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.**

40-5-137. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: **En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76.**

Cross-References

Register of actions, 3-5-504.

40-5-138. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: **En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.**

Cross-References

Register of actions, 3-5-504.

Judgment book, 3-5-507.

40-5-139. Official to represent obligee. (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a state department of family services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: **En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78; amd. Sec. 29, Ch. 609, L. 1987.**

Cross-References

General duties of Attorney General, 2-15-501.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-140. Registration procedure — notice. (1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court:

(a) three certified copies of the order with all modifications thereof;

(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) a statement, verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address

of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: **En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

Docket, 3-5-508.

Fees of the Clerk of the District Court, 25-1-201.

40-5-141. Effect of registration — enforcement procedure. (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: **En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80.**

Cross-References

Register of actions, 3-5-504.

Effect of judicial record of another state, 26-3-203.

Effect of foreign judgment, 26-3-205.

40-5-142. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81.**

Part 2

Administrative Enforcement of Support

Part Cross-References

Reciprocal Agreement for Collection of Wages Act of 1977, Title 39, ch. 3, part 3.

Child Support Income Deduction Act of 1981, Title 40, ch. 5, part 3.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

Inspections of birth records for child support actions, 50-15-112, 50-15-206.

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States and for whom:

(a) support rights are assigned under 53-2-613;

(b) a public assistance payment has been made;

(c) the department is providing support enforcement services under 40-5-203; or

(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or his authorized representative.

(5) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(6) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(7) "Obligor" means a person, including an alleged father, who owes a duty of support.

(8) "Parent" means the natural or adoptive parent of a child.

(9) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(10) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(12) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department under this part.

(13) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder.

History: En. Sec. 1, Ch. 612, L. 1979; amd. Sec. 1, Ch. 561, L. 1985; amd. Sec. 1, Ch. 119, L. 1989; amd. Sec. 1, Ch. 287, L. 1989; amd. Sec. 1, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments — Composite Section: Chapter 119 inserted definitions of alleged father and paternity blood test; and in definition of child, at end of introductory phrase, inserted "and for whom" and inserted subsections relating to assigned support rights, public assistance, child support enforcement services, and an interstate services referral.

Chapter 287 inserted definition of IV-D.

Chapter 549 in definition of child deleted "or "dependent child"" as part of the defined term and inserted subsections relating to assigned support rights, public assistance, child support enforcement services, and an interstate services referral; deleted definitions of disposable earnings, District Court order, earnings, and responsible parent; inserted definitions of obligee, obligor, parent, support order, and IV-D; in definition of public assistance, in first sentence, inserted "for a child" and at end deleted "furnished to a person by a state or county agency, regardless of the original source of the assistance" and inserted second sentence relating to payments to meet the need of a relative with whom the child is living; in definition of support debt, in (a) before "child", deleted "dependent", before "state" inserted "or any other", and at end substituted "a support order" for "the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support" and in (b) substituted "a support order for spousal maintenance" for "the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title"; and made minor changes in phraseology.

Chapter 702 in (2) and (3) changed "department of revenue" to "department of social and rehabilitation services".

The amendments to the definition of child made by Ch. 119 and Ch. 549, inserting (c) and (d), were identical in content but contained minor differences in phraseology. The Code Commissioner has codified the amendments made by Ch. 119 and not Ch. 549. The meaning of the definition remains unchanged.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. No obligee may act to prejudice the rights of the department while such services are being provided.

(5) If child support enforcement services are being or have been provided under this part, no agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

History: En. Sec. 2, Ch. 612, L. 1979; amd. Sec. 1, Ch. 188, L. 1981; amd. Sec. 2, Ch. 561, L. 1985; amd. Sec. 30, Ch. 609, L. 1987; amd. Sec. 2, Ch. 549, L. 1989; amd. Sec. 22, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments — Composite Section: Chapter 549 generally rewrote (1) and added reference to the Uniform Parentage Act (see 1987 MCA for former text); in (2), at beginning of first sentence, substituted language relating to Department of Revenue providing services for language relating to public assistance provided by a state or county agency or when the Department has contracted to collect support, before "child" deleted "dependent", substituted "obligee" for "person having legal custody of the dependent child", and at end substituted "the obligor" for "any person"; in (3) substituted "obligee" for "recipient of public assistance" and at end substituted "on behalf of a child" for "and representing support payments for children in whose behalf public assistance has been previously paid"; in (4), after "civil action", deleted "pursuant to this part", after "party in interest" substituted "if it is providing child support enforcement services under this part" for "upon the payment of public assistance", and at end substituted "while such services are being provided" for "after the receipt of public assistance"; in (5), at beginning, inserted "If child support enforcement services are being or have been provided under this part"; in (6), near beginning, inserted "or an administrative agency"; in (7) substituted "obligee" for "children or person having the care, custody, and control of the child or children", before "state" inserted "this or any other", after "state" substituted "to collect a support debt" for "to obtain reimbursement of money thus spent", and inserted last sentence relating to subrogation; substituted (8) concerning subrogation right for former (8) (see 1987 MCA for former text); in (10) inserted "and records"; and made minor changes in phraseology.

Chapter 702 in (1), after "the department of social and rehabilitation services", substituted "shall promptly take" for "or the department of family services shall promptly refer the matter to the department of revenue for"; in (8)(a), after "paid", deleted "by the department of social and rehabilitation services or the department of family services"; and made minor changes in phraseology. Amendment effective July 1, 1989.

In (1) Ch. 702 made a change in phraseology but not in substance. The amendment of Ch. 549 was substantive, changing "shall" to "may". The Code Commissioner has codified the substantive change made by Ch. 549.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Officers who may administer oaths, 1-6-101.

Issuance of subpoena, 26-2-102.

Modification of support, 40-4-208.

Obligations of parents, Title 40, ch. 6, part 2.

How evidence of abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department may continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(4) The department may terminate services under this section if it:

(a) receives a written request from the obligee for termination of services;

(b) receives notice that the child is receiving public assistance; or

(c) determines that an obligee has violated any term or condition set by the department for an applicant under this section.

History: En. Sec. 3, Ch. 612, L. 1979; amd. Sec. 1, Ch. 672, L. 1985; amd. Sec. 3, Ch. 549, L. 1989; amd. Sec. 15, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments — Composite Section: Chapter 549 in (1), before "support", inserted "child"; in (2), at end, substituted "the terms and conditions by which services are provided under this section" for provision allowing reasonable standards necessary to limit applications for services, taking into account income and resources from other sources; in (3) (now deleted), in three places, substituted "obligor" for "persons from whom the support is being collected"; inserted (3) allowing continued services after public assistance payments end; and inserted (4) stating when services may be terminated. The amendments to (3) made by Ch. 549 were rendered ineffectual by the deletion of (3) in Ch. 702.

Chapter 702 deleted former (3) that read: "(3) The department may not charge the applicant a fee as compensation for services rendered in establishment of or enforcement of support obligations. However, the department may charge a fee to the person from whom the support is being collected. This fee must be in addition to the support payment. The department shall by rule establish reasonable fees commensurate with the cost of enforcement support services to be paid by the person from whom the support is being collected. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the person from whom the support is being collected makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion. The department may, upon a showing of necessity, waive or defer any such fee."

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Income withholding, 40-5-411.

Department of Social and Rehabilitation Services to monitor and enforce child support payments, 40-5-412.

40-5-204. Cooperation by obligee. An obligee shall cooperate with the department in:

(1) identifying and locating the obligor;

(2) establishing the paternity of a child;

(3) obtaining support or any other payments due the obligee and child; and

(4) obtaining reimbursement for previously paid public assistance, if any.

History: En. Sec. 4, Ch. 612, L. 1979; amd. Sec. 4, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: Rewrote entire section to specifically state obligee's cooperation requirements (see 1987 MCA for former text).

Cross-References

How duties of support enforced, 40-5-110.

Paternity, 40-5-128.

How parent and child relationship established, 40-6-104.

40-5-205. Payment of support money collected to support enforcement and collections unit — notice. If the department gives written notice to the obligor, to the clerk of the court, or to an administrative agency that issued a support order, that the child for whom a support order exists is receiving services from the department, then any support money must be paid to the department.

History: En. Sec. 5, Ch. 612, L. 1979; amd. Sec. 5, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning substituted "obligor" for "responsible person"; after "clerk of the court" deleted "if appropriate" and inserted "or to an administrative agency that issued a support order"; after "receiving" substituted "services from the department" for "public assistance"; after "support money" substituted "must be paid to the department" for "paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue"; and made minor changes in phraseology.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and all state, county, and city agencies, officers, and employees must provide on request any information concerning the location, income, and assets of an obligor.

(3) Except as provided in 40-5-261 and rules adopted under 40-5-262, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in

support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

History: **En. Sec. 10, Ch. 612, L. 1979; amd. Sec. 3, Ch. 543, L. 1985; amd. Sec. 4, Ch. 418, L. 1989; amd. Sec. 6, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 418 in (1) inserted reference to requests for information from consumer reporting agencies; and at beginning of (3) substituted exception clause relating to 40-5-261 and 40-5-262 for "Except as provided in 31-3-127".

Chapter 549 rewrote (2) to require only the provision of information by other entities, eliminating the requirement that they assist the Department (see 1987 MCA for former text).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

40-5-207. Department authorized to enforce maintenance awards. If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part.

History: **En. Sec. 4, Ch. 561, L. 1985; amd. Sec. 7, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: Made section applicable to spouses, as well as former spouses.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

40-5-208. Medical support — obligation enforcement — sanctions. (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. Such amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-241 and income withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid.

History: En. Sec. 1, Ch. 130, L. 1987; amd. Sec. 8, Ch. 549, L. 1989; amd. Sec. 17, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments — Composite Section: Chapter 549 throughout section, before "order", inserted "support" and substituted references to obligor for references to parents obligated to pay child support; in second sentence of (1), before "support order", deleted reference to a court of competent jurisdiction; in first sentence of (2), after "support order", deleted "of a court of competent jurisdiction or an administrative agency empowered to enter such order"; and made minor changes in phraseology.

Chapter 702 in (1)(a) inserted "to establish a child support order, whether final or temporary, and in each modification of an existing order", after "require" substituted "the obligor to obtain and maintain" for "parents obligated to pay child support to secure and maintain", before "child" deleted "dependent", after "child" substituted "if" for "at a cost not to exceed 5% of net income, whenever such", after "health insurance" inserted "coverage", after "through" substituted "the obligor's employment or other group health insurance plan" for "their employment", inserted last sentence relating to a warning statement concerning required health insurance coverage, and deleted former last sentence that read: "However, if a court of competent jurisdiction has entered an order establishing a current support obligation and has ordered the obligated parent to secure and maintain health insurance coverage for each dependent child, the department shall enforce the obligation as ordered by the court"; inserted (1)(b) relating to requirement to obtain and maintain health insurance coverage; inserted (2) requiring Department to enforce health insurance obligation; in (3)(a), before "may issue", substituted "The department" for "If the department determines that an obligated parent has failed to maintain health insurance coverage required by the order of a court of competent jurisdiction or an administrative agency empowered to enter such order, it", substituted "obligor" for "parent", and at end of introductory clause inserted "if the department determines an obligor has failed to"; inserted (3)(a)(i) relating to health insurance coverage; inserted (3)(a)(ii) relating to providing information; in (3)(b), in two places, substituted "obtained" for "secured", substituted "or that the obligor has failed to provide the information required" for "in accordance with the court or administrative order", at end of first sentence inserted "or for each month information has not been provided", in second sentence inserted "any administrative remedy available to the department for the enforcement of child support obligations, including", and at end inserted "and income withholding provided for in Title 40, chapter 5, part 4"; deleted former (3) and (4) that read: "(3) Whenever an obligated parent who has been served with notice under this section appears before the department and shows that health insurance coverage in accordance with the court or administrative order:

(a) has been secured and maintained continuously since the date of the order, the department shall dismiss the pending action; or

(b) has not been secured or continuously maintained but such coverage is presently in effect, the department shall suspend the pending action for a period of 12 months.

(4) At the end of the suspension period, the department may schedule a hearing. If at this hearing the department finds that during the suspension period health insurance coverage:

(a) has been continuously maintained, the department shall dismiss the pending action and the obligated parent will not be assessed under this section; or

(b) has not been continuously maintained, the department may enter a final order requiring the obligated parent to pay the sum assessed in accordance with this section for each month coverage was not maintained"; inserted (4) requiring provision of health insurance coverage even though it reduces a child support obligation or ability to pay; and made minor changes in form.

The amendment to the second sentence of (1) made by Ch. 549 has not been codified because the substance of the amendment is contained in (2)(a), inserted by Ch. 702. The amendments to (3)(a) made by Ch. 549 and Ch. 702 were the same in content but contained minor differences in phraseology. The Code Commissioner has codified the amendments made by Ch. 702. The meaning of the subsection remains unchanged.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-209. Child support guidelines — periodic review. (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

History: En. Sec. 3, Ch. 702, L. 1989.

Compiler's Comments

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-210. Standardized fee schedule. (1) The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(2) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order in which the department is the prevailing party.

(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt.

(4) Collection of a fee award may not reduce any current child support payment due the obligee.

(5) Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

History: En. Sec. 16, Ch. 702, L. 1989.

Compiler's Comments

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: En. Sec. 6, Ch. 612, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Adoption of children, Title 40, ch. 8, part 1.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: En. Sec. 7, Ch. 612, L. 1979.

Cross-References

Contempts, Title 3, ch. 1 part 5.

Subpoenas, Title 26, ch. 2, part 1.

Duties of witnesses, Title 26, ch. 2, part 3.

Child support, 40-4-204.

40-5-213. Financial statements by obligor — penalty. (1) If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an obligor, upon written request, shall complete a statement, under oath, stating the obligor's:

(a) current monthly income;

(b) total income over the past 36 months;

(c) the number of dependents for whom the obligor is providing support;

(d) the amount the obligor is contributing toward the support of a child for whom the department is providing services;

(e) current monthly living expenses; and

(f) all other information pertinent to the obligor's financial condition.

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

(3) Failure to comply with this section is a misdemeanor.

History: En. Sec. 8, Ch. 612, L. 1979; amd. Sec. 9, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: At beginning substituted language concerning Department's belief that a support obligation is owed for "Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child"; in (1)(d), after "contributing", deleted "regularly" and at end substituted "a child for whom the department is providing services" for "all children for whom application for such assistance is made"; substituted (1)(f) relating to obligor's financial condition for former text relating to method of determining ability to support children; inserted (2) relating to additional statements; and made minor changes in form.

Cross-References

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Application for assistance, 53-4-232.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale must be based on the uniform child support guidelines adopted by the department under 40-5-209.

(2) Copies of the scale must be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale.

History: En. Sec. 9, Ch. 612, L. 1979; amd. Sec. 4, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) substituted reference to a scale based on uniform child support guidelines adopted by the Department for "The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship"; in (2) deleted first sentence that read: "The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions" and at end substituted " access to the scale" for "access to the minimum scale of suggested contribution"; deleted former (3) that read: "(3) No county, court, officer, or agency may be required to use this scale"; and made minor changes in phraseology.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by obligor — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of a child creates a debt due and owing the state of Montana by the obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to the date of adoption.

(2) If a support order has been entered, the support debt created by this section may not exceed the amount of the order.

(3) If a child has been placed in foster care and a written agreement for payment of support exists between the obligor and any state agency, the support debt is limited to the amount provided for in the agreement. However, if a support order is or has been entered, the provisions of the order prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202(7) and the assignment under 53-2-613.

History: En. Sec. 11, Ch. 612, L. 1979; amd. Sec. 10, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: In (1) and (3) substituted reference to obligor for reference to the responsible parent or parents; in first sentence of (1), after "benefit of", substituted "a child" for "any dependent child or children" and near beginning of second sentence substituted "an obligor who is an adoptive parent" for "an adoptive parent or parents"; substituted (2) relating to conformity with support order for former text that read: "where there has been a district court order established, the debt shall be limited to the amount provided for by the order"; inserted (5) authorizing an independent debt collection action; and made minor changes in phraseology.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Modification of support, 40-4-208.

Remedies of state or political subdivision furnishing support, 40-5-109.

Effect of final decree of adoption, 40-8-125.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-222. Support debt based upon support order — notice — contents — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon a support order. The notice may be served upon the obligor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any support order;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the obligor is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale is lawful after 20 days from the date of service upon the obligor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the obligor may request a fair hearing as provided in 40-5-226.

History: **En. Sec. 12, Ch. 612, L. 1979; amd. Sec. 2, Ch. 188, L. 1981; amd. Sec. 41, Ch. 439, L. 1981; amd. Sec. 11, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: At end of first sentence of (1) substituted "a support order" for "subrogation to or assignment of the judgment created by a district court order"; in second sentence of (1) and in (2)(e), (3), and (4) substituted "obligor" for "debtor"; at end of (1) and in two places in (3) reduced time from 30 days to 20 days; at end of (2)(a) substituted "support order" for "any district court order to which the department is subrogated or has an assigned interest"; near beginning of (3), before "support debt", deleted "subrogated or assigned"; and made minor changes in phraseology.

Cross-References

Process — summons, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of a child. The notice of liability must be served upon the obligor in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the obligee and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the obligor make answer within 20 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt must be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the obligor will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt must be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the obligor, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the obligor may receive a fair hearing pursuant to 40-5-226. The

decision of the department in the hearing must establish the obligor's obligation, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

History: **En. Sec. 13, Ch. 612, L. 1979; amd. Sec. 42, Ch. 439, L. 1981; amd. Sec. 12, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: In six places substituted "obligor" for "responsible parent"; in four places reduced time from 30 days to 20 days; at end of first sentence of (1) substituted "a child" for "any dependent child or children"; in (2)(c) substituted "obligee" for "recipient"; and made minor changes in phraseology.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: **En. Sec. 14, Ch. 612, L. 1979; amd. Sec. 43, Ch. 439, L. 1981; amd. Sec. 13, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: Near beginning of (1) substituted "obligor" for "parent" and in last two sentences substituted "obligor" for "responsible parent"; and made minor changes in phraseology.

Cross-References

Plaintiff's affidavit for obtaining writ, 27-18-202.

Defendant's undertaking to prevent levy, 27-18-301.

40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) (a) In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and the amount of the need and requiring the obligor to appear and show cause at a hearing held by the department why the obligor should not be finally ordered to pay the amount alleged in the notice.

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:

(a) the amount of public assistance payable under Title 53, chapter 4; or

(b) the alleged need.

(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the obligor a notice of temporary support obligation.

(b) The notice must contain:

(i) the names of the child and the person or agency having the custodial care of the child;

(ii) an amount for temporary monthly support determined as provided in subsection (2);

(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and

(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.

(6) Any notice of financial responsibility and the notice of temporary support obligation must be served in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 612, L. 1979; amd. Sec. 44, Ch. 439, L. 1981; amd. Sec. 14, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: Completely rewrote section (see 1987 MCA for former text).

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

(7) Within 20 days of the hearing, the hearing officer shall enter a final decison and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the department shall issue an order to the nonpetitioning party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause, together with a copy of the verified petition, must be served by the petitioner upon all other parties in the manner provided by this part. Upon receipt of proof of service, the department shall schedule a hearing not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

History: En. Sec. 16, Ch. 612, L. 1979; amd. Sec. 45, Ch. 439, L. 1981; amd. Sec. 15, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (2) inserted "At the discretion of the hearing officer"; in (2)(a) substituted "obligor or obligee" for "responsible parent"; inserted (2)(b) allowing hearing in the county in which the Department or one of its offices is located; in (3) reduced time from 30 days to 20 days; and in (4) through (10) completely revised the former procedural provisions (see 1987 MCA for former provisions).

Cross-References

Rules for determining residence, 1-1-215.

Contested cases, Title 2, ch. 4, part 6.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Modification of support, 40-4-208.

40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for any such modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-241.

History: En. Sec. 1, Ch. 544, L. 1985; amd. Sec. 2, Ch. 212, L. 1987.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Duties of the Clerk of District Court, Title 3, ch. 5, part 5.

Judgment, Title 25, ch. 9.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Execution, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

40-5-228 through 40-5-230 reserved.

40-5-231. Establishment of paternity — jurisdiction and venue. (1) For purposes of an administrative action brought under 40-5-231 through 40-5-237, personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under 40-5-231 through 40-5-237 may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located.

History: **En. Sec. 2, Ch. 119, L. 1989.**

40-5-232. Establishment of paternity — notice of paternity determination — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish his paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a man acknowledges his paternity of a child in writing and such acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not he is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve such notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination shall be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) he may request a trial in district court to determine paternity before the final administrative decision is made.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

History: En. Sec. 3, Ch. 119, L. 1989.

40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(3) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

History: En. Sec. 4, Ch. 119, L. 1989.

40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results. (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233. If the issue of paternity is referred to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish such chain of custody.

(3) If the scientific evidence resulting from a blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity shall be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

History: En. Sec. 5, Ch. 119, L. 1989.

40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of health and environmental sciences, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 119, L. 1989.

40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court shall be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in 40-5-231(2) that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

History: En. Sec. 7, Ch. 119, L. 1989.

40-5-237. District court paternity proceedings — objection to tests — additional tests. (1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

History: En. Sec. 8, Ch. 119, L. 1989.

40-5-238 through 40-5-240 reserved.

40-5-241. Warrant for distraint. (1) Twenty-one days after receipt or refusal of a notice of a support debt under provisions of 40-5-222 or 21 days after service of notice of a support debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt plus penalty and fees, if any, and accumulated interest.

(2) A warrant for distraint is an order, under the official seal of the department, directed to a sheriff of any county of Montana or to any agent authorized by law to enforce a district court judgment. The order commands the recipient to levy upon and sell the real and personal property of a delinquent obligor.

History: En. Sec. 17, Ch. 612, L. 1979; amd. Sec. 46, Ch. 439, L. 1981; amd. Sec. 2, Ch. 544, L. 1985; amd. Sec. 16, Ch. 549, L. 1989; amd. Sec. 26, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendments — Composite Section: Chapter 549 in (1), in two places, reduced time from 31 days to 21 days and in two places, before "debt", inserted "a support"; in (2) inserted "the provisions of this part and" and at end substituted ““obligor”” for ““person owing the support debt”, as well as the provisions of this part”; and made minor changes in form.

Chapter 702 in (1), at end, inserted "plus penalty and fees, if any, and accumulated interest" and deleted former last sentence that read: "The warrant is subject to the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part"; and inserted (2) relating to warrant for distraint being an order to enforce a District Court judgment. Amendment effective July 1, 1989.

The amendments to the former last sentence by Ch. 549 were rendered ineffectual by the deletion of that sentence by Ch. 702.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. A person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the support debt that is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(1) fails or refuses to deliver property pursuant to the order;

(2) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien;

(3) fails or refuses to surrender upon demand property distrained under 40-5-241; or

(4) fails or refuses to honor an assignment of wages presented by the department.

History: En. Sec. 18, Ch. 612, L. 1979; amd. Sec. 17, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of section deleted material inserted as subsections (1) through (4); in first sentence of introductory clause, before "debt", inserted "support"; and made minor change in phraseology.

Cross-References

Costs, Title 25, ch. 10.

Debtors of judgment debtor and those holding his property to answer, 25-14-103.

Legal interest, 31-1-106.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-243. Release of excess to obligor. If any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person or entity may release the excess to the obligor without liability under this part.

History: **En. Sec. 19, Ch. 612, L. 1979; amd. Sec. 18, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: At end of section substituted "person or entity may release the excess to the obligor without liability under this part" for "person, firm, corporation, association, political subdivision, or department of the state may, without liability under this part, release the excess to the debtor".

Cross-References

How writ executed — return of excess, 25-13-402.

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the obligor in the particular branch upon which service is made.

History: **En. Sec. 20, Ch. 612, L. 1979; amd. Sec. 19, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: Near end substituted "obligor" for "debtor".

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-245. Satisfaction of debt after levy on property — redemption. Any person owning real property or any interest in real property against which a warrant for distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the property shall be restored to him and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

History: **En. Sec. 21, Ch. 612, L. 1979; amd. Sec. 47, Ch. 439, L. 1981.**

Cross-References

Amount of interest on judgments, 25-9-205.

Redemption, 71-3-116.

Right to redeem, 71-3-117.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-246. Release of distraint and return of seized property — effect. At any time, the department may release a distraint on all or part of the property of the obligor or order the return of seized property without liability if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property.

History: **En. Sec. 23, Ch. 612, L. 1979; amd. Sec. 48, Ch. 439, L. 1981; amd. Sec. 20, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: Near middle of first sentence substituted "obligor" for "debtor"; and made minor changes in punctuation and phraseology.

Cross-References

Fees of the sheriff for holding property, 7-32-2142.

Release of debtor by creditor, Title 28, ch. 1, part 16.

40-5-247. Filing warrant with district court — effect of filing — release. (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor.

(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

(3) (a) A copy of the filed warrant may be sent by the department to the sheriff or authorized agent. Upon receipt of a copy of the filed warrant, the sheriff or authorized agent shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or agent shall return a warrant along with any funds collected within 90 days of the receipt of the copy of the warrant.

(c) If the warrant is returned not fully satisfied the department has the same remedies to collect the deficiency as are available for any civil judgment.

(4) (a) Upon receiving payment in full of the unpaid child support amount plus penalty and fees, if any, and accumulated interest, the department shall release the lien.

(b) Upon receiving partial payment of the unpaid child support amount or if the department determines that a release or partial release of the lien will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(5) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.

History: En. Sec. 27, Ch. 702, L. 1989.

Compiler's Comments

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Effective Date: Section 33, Ch. 702, L. 1989, provided that this section is effective July 1, 1989.

40-5-248 through 40-5-250 reserved.

40-5-251. Debt payment schedule. At any time after notice to the obligor, the department may set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the obligor.

History: En. Sec. 22, Ch. 612, L. 1979; amd. Sec. 21, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: In two places substituted "obligor" for "debtor"; and made minor change in phraseology.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children benefits — schedule of payments, 53-4-248.

40-5-252. Interest on debts due — waiver. (1) The department may collect interest on any support debt due and owing to it at the statutory interest rate payable on judgments recovered in the courts of this state.

(2) No provision of this part may be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

History: En. Sec. 24, Ch. 612, L. 1979; amd. Sec. 22, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) deleted reference to 40-5-221; and made minor changes in form and phraseology.

Cross-References

Interest on judgments, 25-9-205.

40-5-253. Administrative findings and order — administrative remedies — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: En. Sec. 25, Ch. 612, L. 1979; amd. Sec. 23, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "obligor's" for "defendant's"; and made minor changes in punctuation and phraseology.

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Judicial review of contested cases, Title 2, ch. 4, part 7.

40-5-254. Statutory limitations. Support debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: En. Sec. 26, Ch. 612, L. 1979; amd. Sec. 24, Ch. 549, L. 1989.

Compiler's Comments

1989 Amendment: At beginning inserted "support".

Cross-References

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of

court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period.

History: **En. Sec. 27, Ch. 612, L. 1979; amd. Sec. 49, Ch. 439, L. 1981; amd. Sec. 3, Ch. 561, L. 1985; amd. Sec. 25, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: Near beginning substituted "an obligor" for "a responsible parent or former spouse"; near end of first sentence of (2), before "debt", inserted "support"; and made minor changes in form and phraseology.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

"Support obligation" — spousal maintenance, 40-5-201.

Department authorized to enforce spousal maintenance awards, 40-5-207.

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: **En. Sec. 28, Ch. 612, L. 1979; amd. Sec. 50, Ch. 439, L. 1981.**

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-257. Assignment of earnings to be honored — effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to a support order presented by the department. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department is released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: **En. Sec. 29, Ch. 612, L. 1979; amd. Sec. 26, Ch. 549, L. 1989.**

Compiler's Comments

1989 Amendment: In first sentence of (1), after "employing", substituted "an obligor" for "a person owing a support debt or obligation" and at end of sentence substituted "a support order presented by the department" for "court order, presented by the department as a plan to satisfy or retire a support debt or obligation"; and made minor changes in form and phraseology.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-258 through 40-5-260 reserved.

40-5-261. Procedures for making information available to consumer reporting agencies. (1) The department may make information about a support debt available to consumer reporting agencies, as defined in 31-3-102, upon request. The department may charge a fee to recover the cost of responding to requests for support debt information. The department shall provide advance notice to the obligor concerning the proposed release of information. However, lack of actual notice does not preclude the release of information to consumer reporting agencies. The notice may be incorporated into any notice served pursuant to Title 17, chapter 4, part 1; Title 40, chapter 5, part 4; this part; or the federal income tax refund intercept program under 42 U.S.C. 664. The notice must inform the obligor of the methods available for contesting the accuracy of the information.

(2) If contacted by an obligor wishing to contest the accuracy of information proposed for release to consumer reporting agencies, the department shall conduct an informal administrative review, separately or in conjunction with a hearing on any other matter concerning the obligor's support obligation, to determine the accuracy of the information. The accuracy of information provided by the department to consumer reporting agencies may be contested in accordance with the procedures provided in 31-3-124. An obligor dissatisfied with the outcome of a reinvestigation conducted by a consumer reporting agency may receive an administrative hearing on the accuracy of the information by filing a written request with the department. The hearing must be conducted in accordance with 40-5-226, and the resulting findings are subject to judicial review as provided in 40-5-253.

(3) The department shall within 30 days notify all consumer reporting agencies that were provided information pursuant to this section if a reported support debt is paid in full or is no longer being enforced by the department.

History: En. Sec. 6, Ch. 418, L. 1989.

40-5-262. Rules. The department shall adopt rules to implement this section, including rules:

(1) providing for advance notice to the obligor of support debt information requested under 40-5-261;

(2) establishing the procedure for contesting the accuracy of information proposed for release to consumer reporting agencies;

(3) providing for consideration of the obligor's payment record, the availability of other remedies, and other matters relevant to determining whether the release of information would promote the collection of a support debt or would be inappropriate under the circumstances; and

(4) governing the format and frequency of reports to consumer reporting agencies.

History: En. Sec. 7, Ch. 418, L. 1989.

40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or his designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

History: En. Sec. 2, Ch. 287, L. 1989.

40-5-264. Cooperative agreements. (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides.

History: En. Sec. 3, Ch. 287, L. 1989.

Part 3

Child Support Income Deduction

Part Cross-References

Child support, 40-4-204.

Assignments of earnings, 40-4-207.

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

Obligations of parents for the support and education of their children, 40-6-211.

40-5-301. Short title. This part may be cited as the "Child Support Income Deduction Act of 1981".

History: **En. Sec. 1, Ch. 171, L. 1981.**

40-5-302. Purpose. The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.

History: **En. Sec. 2, Ch. 171, L. 1981.**

Cross-References

Child support, 40-4-204.

Obligations of parents for support and education of their children, 40-6-211.

40-5-303. Petition for income deduction — who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of family services or the department of social and rehabilitation services of the state of Montana.

History: **En. Sec. 3, Ch. 171, L. 1981; amd. Sec. 31, Ch. 609, L. 1987; amd. Sec. 23, Ch. 702, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning of (3) deleted "the department of revenue". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Representation of child, 40-4-205.

Enforcement of minor's rights, 41-1-202.

Department of Social and Rehabilitation Services — recovery of support payments from parents or guardianship assets, 41-3-1125.

40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.

History: **En. Sec. 4, Ch. 171, L. 1981.**

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

History: **En. Sec. 5, Ch. 171, L. 1981.**

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-306. Discharge of delinquency. If the obligor pays the total amount of child support due and payable within the 15 days specified in 40-5-305, no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

History: En. Sec. 6, Ch. 171, L. 1981.

40-5-307. Delinquency of child support denied — hearing. If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304.

History: En. Sec. 7, Ch. 171, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order shall state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under subsection (2) of 40-5-309 as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) to whom the deduction is to be made payable and where it is to be forwarded by the employer.

History: En. Sec. 8, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-309. Amount to be deducted from income. (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) not less than 25% of the obligor's disposable earnings but may not be more than the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

History: **En. Sec. 9, Ch. 171, L. 1981; amd. Sec. 1, Ch. 625, L. 1987.**

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;

(2) voluntary deductions from the obligor's wages or salary; and

(3) other court-ordered garnishment of wages or salary.

History: **En. Sec. 10, Ch. 171, L. 1981.**

Cross-References

Earnings of judgment debtor exempt from execution, 25-13-614.

What property subject to attachment, 27-18-102.

Wage brokers — restrictions upon assignment of wages or salary, 31-1-304.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

40-5-311. Remedy not exclusive. The remedy provided in this part for the collection of unpaid child support is not exclusive. This part provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

History: **En. Sec. 11, Ch. 171, L. 1981.**

Cross-References

Remedies additional, 40-5-104, 40-5-404.

Part 4

Child Support Enforcement Act Administrative Income Withholding

Part Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

40-5-401. Short title. This part may be cited as the "Child Support Enforcement Act".

History: **En. Sec. 1, Ch. 571, L. 1985; amd. Sec. 6, Ch. 702, L. 1989.**

Compiler's Comments

1989 Amendment: After "Act" deleted "of 1985".

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-402. Purpose. The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

History: **En. Sec. 2, Ch. 571, L. 1985.**

Cross-References

Child support, 40-4-204.

Obligations of parents, Title 40, ch. 6, part 2.

40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(6) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

History: **En. Sec. 3, Ch. 571, L. 1985; amd. Sec. 24, Ch. 702, L. 1989.**

Compiler's Comments

1989 Amendment: In definition of Department substituted "department of social and rehabilitation services provided for in 2-15-2201" for "department of revenue provided for in 2-15-1301". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Interest on judgments, 25-9-205.

Earnings of judgment debtor exempt from execution, 25-13-614.

Maintenance, 40-4-203.
Child support, 40-4-204.
Department authorized to enforce maintenance awards, 40-5-207.
Inspections of birth records for child support actions, 50-15-112, 50-15-206.

40-5-404. Other remedies available. The remedies provided in this part are in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

History: En. Sec. 20, Ch. 571, L. 1985; amd. Sec. 7, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: Substituted reference to remedies for reference to remedy; and made minor changes in phraseology.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

40-5-405. Rulemaking authority. The department shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. Sec. 21, Ch. 571, L. 1985.

Cross-References

"Rule" defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-406 through 40-5-410 reserved.

40-5-411. Income withholding. (1) If an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established as required by law or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part if:

(a) except as provided in 40-4-204 and 40-6-116, a support obligation is initially decreed and ordered or modified after January 1, 1990, by a district court or administrative process, regardless of whether child support payments are in arrears; or

(b) the obligor is found to owe a combination of unpaid child support under a support order in an amount equal to or in excess of 1 month's support payment.

(2) When the requirements of this part have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages, if any, due when the withholding order takes place.

(3) The provisions for income withholding under this part take precedence over any other law or court order.

History: En. Sec. 4, Ch. 571, L. 1985; amd. Sec. 8, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "as required by law" for "by order of a court" and at end inserted "if"; inserted (1)(a) relating to support obligations decreed, ordered, or modified after January 1, 1990; inserted (1)(b) relating to arrearages in excess of 1 month's support payment; in (2), after "defray arrearages", inserted "if any"; and made minor change in phraseology.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

40-5-412. Initiation of income withholding procedures. (1) In a case concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.

(2) In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.

(3) To accomplish the purpose of subsection (2), the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.

(4) Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor.

History: En. Sec. 5, Ch. 571, L. 1985; amd. Sec. 9, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted language relating to immediate order for income withholding for "In each case in which the department is enforcing a support order assigned to the state pursuant to 53-2-613 or in which the department is collecting support on behalf of an obligee who has applied for services under 40-5-203, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes any combination of unpaid support equal to or in excess of 1 month's support payment, the department shall commence withholding from the obligor's income"; inserted (2) relating to monitoring and tracking of support payments in cases other than those under 40-5-411 and withholding for arrearages in excess of 1 month's support; and in (3) substituted "subsection (2)" for "subsection (1)".

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action if:

(a) the department previously has not issued an order to withhold and it has determined the obligor owes a combination of unpaid support equal to or in excess of 1 month's support;

(b) additional arrearages have accrued subsequent to the issuance of an order to withhold; or

(c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold.

(2) The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the implementation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact; and

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice.

(3) The notice must be served upon the obligor personally or by certified mail.

History: En. Sec. 6, Ch. 571, L. 1985; amd. Sec. 10, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "an initial order or a modification of an existing order on the payor under 40-5-415" for "an order on the payor to commence income withholding" and at end, after "intended", deleted "withholding"; inserted (1)(a) relating to arrearages in excess of 1 month's support; inserted (1)(b) relating to arrearages accrued subsequent to withholding order; inserted (1)(c) relating to arrearages due when immediate withholding has commenced; in (2)(c) inserted "or modification of an existing order" and after "that" substituted "the intended action" for "withholding, including the amounts to be withheld"; in (2)(d) inserted "for the amount stated in the notice"; and made minor changes in form.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Certified mail, 1-1-202.

Actual and constructive notice, 1-1-217.

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Montana Administrative Procedure Act, Title 2, ch. 4.

40-5-414. Hearing. (1) The obligor may within 10 days of being served with notice of the intended action under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) In a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which the obligor requests a hearing within the time allowed, the intended action may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

(3) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(4) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(5) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding.

(6) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(7) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415.

History: En. Sec. 7, Ch. 571, L. 1985; amd. Sec. 11, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "intended", substituted "action" for "income withholding"; in (2) substituted "In a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which" for "If" and substituted "the intended action" for "income withholding"; in (6) inserted introductory clause relating to accrued arrearages and additional arrearages; inserted (7) relating to failure to request a hearing or determination of arrearages in excess of 1 month's support"; and made minor changes in punctuation.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-415. Order to withhold income. (1) When the requirements of this part have been met, the department shall immediately serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department; and

(d) state the rights and duties of the payor under this part.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors.

History: En. Sec. 8, Ch. 571, L. 1985; amd. Sec. 12, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "When the requirements of this part have been met" for "If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support payment" and after "order" inserted "or modification order"; and in (2), in two places after "order", inserted "or modification order".

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Actual and constructive notice, 1-1-217.

40-5-416. Determination of amount of income to be withheld. (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the obligor's income.

(c) If income is being withheld to satisfy an arrearage, the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b).

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages.

History: En. Sec. 9, Ch. 571, L. 1985; amd. Sec. 13, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1)(a) substituted "Subject to the limitations" for "Except as" and at end deleted "plus"; inserted introductory clause of (1)(b) relating to satisfaction of arrearages; at end of (1)(b)(i) substituted "or" for "plus"; inserted (1)(b)(ii) relating to 25% of obligor's income; in (1)(c) inserted "If income is being withheld to satisfy an arrearage, the department may allow"; and made minor changes in form, phraseology, and punctuation.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Earnings of judgment debtor — exemptions, 25-13-614.

40-5-417. Modification or termination of withholding orders. (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.

(3) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

History: En. Sec. 14, Ch. 571, L. 1985; amd. Sec. 14, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) relating to adjustment of withholding amount to satisfy accrued arrearages.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Modification of child support, 40-4-219.

40-5-418. Payment records. (1) The department, in collecting, disbursing, or receiving payments pursuant to orders to withhold income, shall maintain complete, accurate, and clear records of all payments and disbursements.

(2) Certified payment records maintained by the department must, without further proof or foundation, be admitted into evidence in any legal proceedings under this part. Such records constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to monitor support payment in a case.

History: **En. Sec. 15, Ch. 571, L. 1985.**

Cross-References

Public records — presumption of correctness, 26-1-602.

Montana Rules of Evidence, Title 26, ch. 10.

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

40-5-419 and 40-5-420 reserved.

40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department.

(2) If the obligor's pay periods are at intervals of less than 1 month, the payor may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly withholding as directed by the withholding order.

(3) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

(4) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(5) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor.

History: **En. Sec. 10, Ch. 571, L. 1985.**

40-5-422. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire an obligor:

(a) because the person has a child support obligation; or

(b) because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

(2) Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay.

History: **En. Sec. 12, Ch. 571, L. 1985; amd. Sec. 18, Ch. 702, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (1)(a) relating to a person with a child support obligation; and made minor changes in form, phraseology, and punctuation.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-423. Priority of income withholding. An order to withhold and deliver income under this part takes priority over any:

(1) wage or income deduction order under any other state law;
(2) voluntary or involuntary assignment of wages;
(3) other voluntary deductions from the obligor's income;
(4) levies, writs of execution, or garnishments of the obligor's income; and
(5) any other claims by creditors.

History: En. Sec. 13, Ch. 571, L. 1985.

Cross-References

What property subject to attachment, 27-18-102.

40-5-424. Civil liability for failure to comply with income withholding order. (1) A payor who fails to withhold and deliver support money from the obligor's income when ordered to do so under 40-5-415 is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered.

(2) No payor who complies with an order to withhold under this part is liable for wrongful withholding to the obligor or to any other person claiming rights derived from the obligor.

History: En. Sec. 11, Ch. 571, L. 1985.

Cross-References

Damages — measure of damages, Title 27, ch. 1, parts 2 and 3.

40-5-425. Payor and obligor notice. (1) After a person is hired for employment, the payor shall submit to the person a written form inquiring whether the person owes child support that is required by law to be withheld from income according the terms of an order, if any, concerning child support. The person shall immediately complete, sign, and date the form and return it to the payor. The completed form must be retained by the payor for at least 3 years after the date of hiring or at least 1 year after the date that employment is terminated, whichever is longer.

(2) If a person discloses that he owes child support that is required to be withheld, the payor shall begin withholding according to the terms of the order and this part.

(3) At any time an obligor is subject to automatic income withholding, the obligor shall disclose to a payor that the obligor owes child support in order that the payor may begin withholding according to the terms of the order and this part. If the obligor does not make such disclosure, the failure to disclose may be considered a contempt of the district court.

(4) A payor may not inquire as to whether a prospective employee owes child support that is required by law to be withheld from income according to the terms of an order, if any, concerning child support, until employment has been offered and accepted.

History: En. Sec. 5, Ch. 702, L. 1989.

Compiler's Comments

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

40-5-426 through 40-5-430 reserved.

40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not he resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department.

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications thereof;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of such income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to such other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department.

History: En. Sec. 16, Ch. 571, L. 1985.

Cross-References

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for interstate income withholding must include:

(a) a certified copy of the support order, with all modification thereof;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if such records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall commence procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the interstate aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within such time and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit.

History: En. Sec. 17, Ch. 571, L. 1985.

40-5-433. Additional duties of department in interstate income withholding. (1) Unless the public agency of the foreign jurisdiction makes application to the department for additional services, the department is not required to locate the obligor or to locate payors of income to the obligor. If the application for interstate service provided for in 40-5-431 and 40-5-432 fails to provide this information or the information is determined to be incorrect, the department may return the application without further proceeding under this part.

(2) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(3) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application.

History: En. Sec. 18, Ch. 571, L. 1985.

40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income in another state, the department shall request the agency responsible for income withholding in that state to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other state all documentation required by the law of that state necessary for the purpose of obtaining an income withholding order in that state. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.

History: **En. Sec. 19, Ch. 571, L. 1985.**

CHAPTER 6

PARENT AND CHILD

Part 1 — Uniform Parentage Act

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40-6-217. Married person not bound for support of spouse's children by former marriage.
40-6-218. Compensation and support of person after attaining majority.
40-6-219 and 40-6-220 reserved.
40-6-221. Custody, services, and earnings of child.
40-6-222. Custody of children where husband and wife living separate.
40-6-223. When parent may bring action for the exclusive control of children — decree.
40-6-224. When custody may be awarded without dissolution proceedings.
40-6-225 through 40-6-230 reserved.
40-6-231. Right of parent to determine the residence of child.
40-6-232. Parental control over property of child.
40-6-233. Remedy for parental abuse.
40-6-234. When parental authority ceases.
40-6-235. Parent may relinquish services and custody of child.
40-6-236. Wages of minors.
40-6-237. Destruction of property by minor — liability of parents.
40-6-238. Limitation on amount of recovery.

Part 3 — Obligations of Children

40-6-301. Duty of child to support indigent parents.
40-6-302. Failure to support — misdemeanor.
40-6-303. Civil action to enforce duty to support.

Chapter Cross-References

Tax provisions relating to families, 7-6-4405, 7-6-4408, 7-16-4105, 15-6-201 through 15-6-208, 15-7-307, 15-30-112, 15-30-113, 15-30-134.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-3-1301, 19-3-1302.

Civil procedure provisions relating to family matters, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgments when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

Parent or guardian may sue for injury or death of child or ward, 27-1-323, 27-1-512, 27-1-513.

When action not abated by death or other disability, 27-1-501, 27-1-511, 27-1-512.

U.C.C. provisions relating to families, 30-2-318, 30-9-109, 30-9-307.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2103, 39-51-2105, 39-51-2106, 39-51-2201, 39-51-2204, 39-51-2205, 39-51-2301 through 39-51-2308.

Workers' compensation law relating to families, Title 39, ch. 71, part 1; 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

Rights of children, Title 41, ch. 1.

Child labor, Title 41, ch. 2.

General criminal provisions relating to family, 45-1-205, 45-2-101, 45-2-211.

Justifiable use of force with respect to children, 45-3-107.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104, 50-20-106 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-3-204, 46-16-212, 46-23-1022, 46-23-1102.

Diagnostic tests for pregnant women and newborn infants, Title 50, ch. 19.

Day-care facilities, Title 52, ch. 2, part 7.

Payments for care of persons at institutions, Title 53, ch. 1, part 4.

General welfare provisions relating to family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Automobile registration may be transferred to surviving heir without letters of administration, 61-3-201.

Child safety restraint systems, 61-9-420.

Distribution of estate property, Title 72.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Housing Law of 1975, Title 90, ch. 6.

Part 1

Uniform Parentage Act

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: **En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.**

40-6-102. Parent and child relationship defined. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: **En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302.**

Cross-References

Effect of final decree of adoption, 40-8-125.

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: **En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.**

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: **En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.**

Cross-References

Effect of final decree of adoption, 40-8-125.

Certificate of adoption, 50-15-303.

40-6-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides; or

(ii) with his consent, he is named as the child's father on the child's birth certificate; or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305.

Cross-References

Paternity, 40-5-128.

Admissibility of paternity blood test from administrative paternity hearing, 40-5-234.

Effect of administrative order establishing paternity — state child support enforcement, 40-5-235.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Child legitimized by marriage of parents, 40-6-203.

Birth certificates, Title 50, ch. 15, part 2.

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306.

Cross-References

Legitimacy of children born in wedlock, 40-6-201.

Vital statistics — duties of Department, 50-15-103.

Inspection of records and issuance of copies limited, 50-15-112.

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the department of family services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307; amd. Sec. 32, Ch. 609, L. 1987.

Cross-References

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Paternity, 40-5-128.

Unborn children, 41-1-103.

Enforcement of minor's rights, 41-1-202.

Personal representative, Title 72, ch. 12, part 5.

40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the

time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112.

History: **En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979; amd. Sec. 1, Ch. 442, L. 1985; amd. Sec. 1, Ch. 129, L. 1987.**

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

When person entitled to bring action is under a disability, 27-2-401.

Minors and adults defined, 41-1-101.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

History: **En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309.**

Cross-References

Residence — rules for determining, 1-1-215.

Venue in probate proceedings, 72-1-203.

40-6-110. Parties. The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of family services as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

History: **En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310; amd. Sec. 33, Ch. 609, L. 1987.**

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Infants or incompetent persons as parties, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Enforcement of minor's rights, 41-1-202.

Appointment of guardian ad litem, 41-5-512.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Subpoenas and enforcement — compelling testimony, 2-4-104.

Sittings of court — when private, 3-1-313.

Contempts, Title 3, ch. 1, part 5.

Perjury, 45-7-201.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Opinions and expert testimony, Art. VII, Montana Rules of Evidence (see Title 26, ch. 10).

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

Cross-References

Basis of opinion testimony by experts, Rule 703, Montana Rules of Evidence (see Title 26, ch. 10).

Opinions on ultimate issue, Rule 704, Montana Rules of Evidence (see Title 26, ch. 10).

Paternity, 40-5-128.

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.

Cross-References

Guardian ad litem, 25-5-301.

Pretrial procedure — formulating issues, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212.

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including his medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;
(g) the financial resources and the earning ability of the child;
(h) the responsibility of the parents for the support of others;
(i) the value of services contributed by the custodial parent;
(j) the cost of day care for the child; and
(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:

(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and

(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.

(b) Income is not subject to automatic withholding if:

(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or

(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.

(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.

(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department.

(9) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316; amd. Sec. 2, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (3)(a), after "concerning", deleted "the duty of support"; inserted (3)(b) requiring that judgment or order refer to child support; in (5)(a) inserted "including his medical needs"; inserted (5)(j) relating to cost of day care; inserted (5)(k) relating to custody arrangements; inserted (6) requiring application of standards and guidelines, stating that finding is required for nonapplication of standards and guidelines, and requiring court to state reasons for not ordering child support; inserted (7) relating to health insurance coverage; inserted (8) requiring automatic income withholding, stating circumstances when income is not subject to automatic withholding, and requiring application for and immediate implementation of automatic income withholding; inserted (9) relating to a warning statement concerning required health insurance coverage; and made minor changes in punctuation and form.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

Cross-References

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Necessity determined by standard of living, 40-2-210.

Child support, 40-4-204.

Best interest of child, 40-4-212.

Visitation, 40-4-217.

Obligations of parents for the support and education of their children, 40-6-211.

Custody, services, and earnings of child, 40-6-221.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Judgments — method of enforcement, Title 25, ch. 13, part 2.

Enforcement of order to pay money, 25-13-204.

Remedies, Title 27.

Payment of maintenance or support to court, 40-4-206.

Paternity, 40-5-128.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319.

Cross-References

Child support, 40-4-204.

Modification and termination of provisions for maintenance, support, and property disposition, 40-4-208.

Obligations of parents for the support and education of their children, 40-6-211.

40-6-119. Rights to counsel — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320.

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Copies of proceedings, 3-5-604.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Sittings of court — when private, 3-1-313.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

Consideration, Title 28, ch. 2, part 8.

Best interest of child, 40-4-212.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.

Cross-References

Child of unknown parentage, 50-15-203.

Delayed or amended birth certificate, 50-15-204.

Establishment of date and place of birth when certificate cannot be obtained, 50-15-205.

Permissible disclosure of illegitimate birth, 50-15-206.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana or the licensed adoption agency to whom the child is relinquished may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981; amd. Sec. 2, Ch. 1, Sp. L. 1981.

Cross-References

Consent required for adoption, 40-8-111.

Effect of final decree of adoption, 40-8-125.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 shall be presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330.

Cross-References

Definition and examples of disputable presumptions, 26-1-602.

Presumptions, Art. III, Montana Rules of Evidence (see Title 26, ch. 10).

Certificates, 50-15-109.

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the

petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Adoption of children, Title 40, ch. 8, part 1.

Certificates, 50-15-109.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.
Effect of final decree, 40-8-125.
Certificates, 50-15-109.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: **En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.**

Cross-References

Presumption of paternity, 40-6-105.

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.

Cross-References

Best interest of child, 40-4-212.

Child adoption agencies, Title 53, ch. 4, part 4.

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.

40-6-132. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 1, Ch. 530, L. 1981.

40-6-133. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 3, Ch. 530, L. 1981.

40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to the department of family services or a licensed adoption agency. A parent may not execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.

(2) Except as otherwise provided in this section, a relinquishment shall be by a separate instrument executed before a notary public.

(3) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated and if the department of family services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of a person who executed a relinquishment and of the department of family services or the licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall be made.

History: En. Sec. 1, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 225, L. 1987.

Cross-References

Officers who may administer oaths, 1-6-101.

Reporter's report prima facie evidence, 3-5-612.

Jurisdiction — child custody proceedings, 40-4-211.

Minor parent, 40-8-105.

Consent required for adoption, 40-8-111.

Withdrawal of consent, 40-8-112.

Effect of final decree of adoption, 40-8-125.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Child adoption agencies, Title 53, ch. 4, part 4.

Part 2

Obligations of Parents

Part Cross-References

Mandatory child safety restraint systems, 61-9-419 through 61-9-423.

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.

Cross-References

Presumption of legitimacy, 26-1-602.

Presumptions, Art. III, Montana Rules of Evidence (see Title 26, ch. 10).

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

Cross-References

Complete list of conclusive presumptions, 26-1-601.

Presumption of legitimacy, 26-1-602.

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

Cross-References

Form of application, license, marriage certificate, and consent — names of children included, 40-1-107.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

Cross-References

Earnings and accumulations of married persons, 40-2-205.

Earnings and accumulations when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

Cross-References

Duty of child to support indigent parents, 40-6-301.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

Cross-References

Child support, 40-4-204.

Modification and termination of support, 40-4-208.

Estates — creditors' claims, Title 72, ch. 3, part 8.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: **En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.**

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Duty of child to support indigent parents, 40-6-301.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: **En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.**

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: **En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.**

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: **En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.**

Cross-References

Debts of spouse contracted before marriage, 40-2-208.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

Cross-References

Minors and adults defined, 41-1-101.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.

Cross-References

Best interest of child, 40-4-212.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Child labor, Title 41, ch. 2.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.

Cross-References

Earnings and accumulations of married person — when separated, 40-2-206.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.

Cross-References

Necessity determined by standard of living, 40-2-210.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Temporary order or temporary injunction, 40-4-121.
Best interest of child, 40-4-212.
Temporary orders, 40-4-213.
Modification of custody, 40-4-219.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.

Cross-References
Legal separation, 40-4-104.
Temporary order or temporary injunction, 40-4-121.
Separation agreement, 40-4-201.
Temporary custody orders, 40-4-213.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

Cross-References
Residence — rules for determining, 1-1-215.
Best interest of child, 40-4-212.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

Cross-References
Enforcement of minor's rights, 41-1-202.
Delegation of power by minors forbidden, 41-1-301.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111.

Cross-References
Child abuse, neglect, and dependency, Title 41, ch. 3.
Endangering the welfare of children, 45-5-622.
Sexual abuse of children, 45-5-625.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;
(2) upon the marriage of a child; or
(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

Cross-References

Marriage, Title 40, ch. 1.
Best interest of child, 40-4-212.
Effect of final decree, 40-8-125.
Minors and adults defined, 41-1-101.
Dispositional hearing — abuse, neglect, and dependency, 41-3-406.
Limited emancipation at age 16, 41-3-408.
Guardians of minors, Title 72, ch. 5, part 2.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.
Relinquishment of parental rights, 40-6-135.
Service of summons — how abandonment established, 41-5-503.
Endangering the welfare of children, 45-5-622.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

Cross-References

Payment of wages generally, 39-3-204.
Child labor, Title 41, ch. 2, part 1.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.
Youth Court Act — purpose, 41-5-102.
Criminal mischief, 45-6-101.
Application of minors for drivers' licenses, 61-5-108.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.

Attorneys' fees, Title 25, ch. 10, part 3.

Right to compensatory damages, 27-1-202.

Damages to be reasonable, 27-1-302.

Part 3

Obligations of Children

40-6-301. Duty of child to support indigent parents. It is hereby declared and made the duty of every adult child, having the ability so to do, to furnish and provide necessary food, clothing, shelter, and medical attendance for his indigent parent or parents, unless, in the judgment of the court or jury, he is excused therefrom by reason of intemperance, indolence, immorality, or profligacy of such parent.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Nonsupport, 45-5-621.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

40-7-101. Short title.
40-7-102. Purpose — construction.
40-7-103. Definitions.

40-7-104. Jurisdiction.
40-7-105. Notice and opportunity to be heard.
40-7-106. Notice to persons outside this state — submission to jurisdiction.
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40-7-119. Taking testimony in another state.
40-7-120. Hearings and studies in another state — orders to appear.
40-7-121. Assistance to courts of other states.
40-7-122. Preservation of documents for use in other states.
40-7-123. Request for court records of another state.
40-7-124. International application.
40-7-125. Priority.

Part 1

Uniform Child Custody Jurisdiction Act

Part Cross-References
Custody jurisdiction, 40-4-211.
Custodial interference, 45-5-304.

40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: **En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Custodial interference, 45-5-304.

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: **En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.**

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: **En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.**

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

Cross-References

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

Modification of custody, 40-4-219.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under

40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of proceedings, 40-4-211.

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or

it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

Cross-References

Change of venue, Title 25, ch. 2, part 2.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Effect of other judicial orders — when disputable presumption created, 26-3-202.
Hearings in custody proceedings, 40-4-216.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.

Cross-References

Costs, Title 25, ch. 10, parts 1 and 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Best interests of child, 40-4-212, 40-6-130.
Custody modification, 40-4-219.
Custodial interference, 45-5-304.

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of custody proceedings, 40-4-211.

Affidavit practice, 40-4-220.

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.

Cross-References

Hearings, custody proceedings, 40-4-216.

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.

Cross-References

Decree of dissolution of marriage, 40-4-108.

Separation agreement, 40-4-201.

Modification of custody, 40-4-219.

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Modification of custody, 40-4-219.

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: **En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judicial record of another state, 26-3-203.

Judicial supervision, 40-4-218.

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: **En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: **En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: **En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.**

Cross-References

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of guardian of minor, 72-5-231.

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.

Cross-References

Costs, Title 25, ch. 10.

Effect of judicial record of another state, 26-3-203.

Investigations and reports, 40-4-215.

Hearings, 40-4-216.

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.

Cross-References

Copies of proceedings, 3-5-604.

Costs, Title 25, ch. 10.

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Investigations and reports, 40-4-215.

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.

Cross-References
Copies of proceedings, 3-5-604.
Investigations and reports, 40-4-215.
Affidavit practice, 40-4-220.

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.

Cross-References
Copies of proceedings, 3-5-604.
Effect of judicial record of another state, 26-3-203.

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.

Cross-References
Effect of judgments of other foreign tribunals, 26-3-205.

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.

Cross-References
Custody hearings to receive priority, 40-4-216.

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

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Part 1

Adoption of Children

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Certificates of adoption or annulment of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Subsidized adoption, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of family services, as established and provided for in 2-15-2401.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135 or 40-8-109, whichever is applicable.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981; amd. Sec. 3, Ch. 1, Sp. L. 1981; amd. Sec. 34, Ch. 609, L. 1987.

Cross-References

Special proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Minors and adults defined, 41-1-101.

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter.

History: En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202; amd. Sec. 7, Ch. 530, L. 1981.

Cross-References

Adoption of adults, Title 40, ch. 8, part 2.

Hard-to-place child, 53-4-303.

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Minors and adults defined, 41-1-101.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.

Cross-References

Husband and wife, Title 40, ch. 2.

Legal separation, 40-4-104.

Best interest of the child — custody to father — legitimation, 40-6-130.

Minors and adults defined, 41-1-101.

Eligibility for subsidy, 53-4-308.

Child adoption agencies, Title 53, ch.4, part 4.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.

Cross-References

Residence — rules for determining, 1-1-215.

Venue, Title 25, ch.2.

40-8-108. Who may place a child for adoption. A child may be placed for adoption only by:

(1) the department;

(2) a licensed child placing agency; or

(3) the child's parents.

History: En. Sec. 10, Ch. 530, L. 1981.

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents or their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(8) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(9) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child.

History: **En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 277, L. 1987; amd. Sec. 3, Ch. 18, L. 1989; amd. Sec. 1, Ch. 539, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 18 in (3)(c), after "birth parents", substituted "or their representatives have provided" for "the prospective adoptive parents, and their representatives have agreed in writing to provide" and after "the court with" substituted "the report required by 40-8-136" for "sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement".

Chapter 539 inserted (4) authorizing Department to contract with licensed social workers and child-placing agencies to conduct investigations and prepare report; and inserted (5) allowing Department to charge fee for investigation and report.

40-8-110. Adoption services account. There is an adoption services account in the special revenue fund. The fees collected by the department of family services under 40-8-109 must be deposited into this account and may be used by the department for adoption service.

History: **En. Sec. 2, Ch. 539, L. 1989.**

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(3)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979; amd. Sec. 8, Ch. 530, L. 1981; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Children born out of wedlock — relinquishment — consent, 40-6-125.

Expected child — intent to release or consent, 40-6-127.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Dispositional hearing in abuse and neglect cases, 41-3-406.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

Subsidized adoptions, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

Termination of appointment of guardian for a minor, 72-5-233.

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

Cross-References

Best interests of child, 40-4-212.

Statute of Limitations — adoption, 40-6-108.

Revocation of releases, 40-6-135.

40-8-113. Consent of child. If a child is 12 years of age or over, he must consent to his adoption. Consent must be given in court or be in writing in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207; amd. Sec. 9, Ch. 530, L. 1981.

Cross-References

Enforcement of minor's rights, 41-1-202.

40-8-114 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of family services or to the child placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

History: **En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208; amd. Sec. 12, Ch. 530, L. 1981; amd. Sec. 2, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 233, L. 1989.**

Compiler's Comments

1989 Amendment: Deleted (4) containing requirement that petition be filed within 1 year of child's placement.

Cross-References

Petition for change of name of natural person, 27-31-101.

Procedure in adult adoption, 40-8-202.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child placing agency or other person named by the court, unless an investigation has been made prior to the filing as provided in subsection (4). The investigation may be waived by the court or the department if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator at the time the petition is filed or within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

(4) (a) If an investigation has been made within the 6 months immediately preceding the filing of the petition, the court does not have to order a new investigation to be made.

(b) The report of the earlier investigation must contain the information and recommendation specified by subsections (1) and (3) and be filed with the petition for adoption.

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209; amd. Sec. 13, Ch. 530, L. 1981; amd. Sec. 3, Ch. 277, L. 1987; amd. Sec. 1, Ch. 406, L. 1987.

Cross-References

Records to be confidential, 53-4-306.

Certification as hard to place, 53-4-307.

Child adoption agencies, Title 53, ch. 4, part 4.

40-8-123. Summary decree. (1) If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered or received pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

(2) The department or the child placing agency may recommend in the investigation report filed with the petition for adoption that the court issue a summary decree as provided for in subsection (1) if:

(a) a period of 6 months has elapsed since the department or licensed child placing agency placed the child for adoption; and

(b) the department or licensed child placing agency conducted an investigation during that period.

History: En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210; amd. Sec. 14, Ch. 530, L. 1981; amd. Sec. 4, Ch. 277, L. 1987.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such

person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process shall not be made on any parent who has relinquished his child to the department of family services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court or after the date of placement for adoption, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree or the date of placement for adoption, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of family services or the licensed child placing agency or any other person named by the court. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree or the date of placement for adoption. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211; amd. Sec. 5, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Certificates of adoption, 50-15-303.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents.

(2) After the final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212; amd. Sec. 1, Ch. 582, L. 1989.

Compiler's Comments

1989 Amendment: In (1) deleted last sentence that read: "From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes"; at end of (2) deleted "or to his property by descent and distribution"; inserted (3) referring to Title 72; and made minor changes in phraseology.

Cross-References

Parent and child relationship defined, 40-6-102.

How parent and child relationship established, 40-6-104.

Relinquishment of parental rights, 40-6-135.

Substitute birth certificate for person adopted, 50-15-304.

Eligibility for subsidy, 53-4-308.

Establishment of parent-child relationship, 72-2-213.

Adopted persons included in class gift terminology, 72-2-503.

40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213; amd. Sec. 3, Ch. 228, L. 1981; amd. Sec. 35, Ch. 609, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

Certificate of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Records to be confidential, 53-4-306.

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-8-129 through 40-8-134 reserved.

40-8-135. Adoption fees — violation — penalty. (1) Reasonable adoption fees may be charged by the child's birth parent, birth parents, or guardian for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

(a) a petition for adoption;
(b) placement of a child;
(c) medical care or services;
(d) prenatal care;
(e) foster care; or
(f) other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater than that allowed under subsection (1) commits the offense of charging excessive adoption process fees.

(3) A person convicted of the offense of charging excessive adoption process fees may be fined an amount not to exceed $1,000.

History: **En. Sec. 1, Ch. 18, L. 1989.**

40-8-136. Report of agreements and disbursements. (1) Prior to a hearing under 40-8-109, the birth parents or their representatives shall file with the court a report of agreements and disbursements, and they shall serve the report on the department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include any expenses related to:

(i) the birth of the child;
(ii) placement of the child with the identified adoptive parents;
(iii) medical or hospital care received by the birth parent or child prior to or after the child's birth; and
(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person.

History: **En. Sec. 2, Ch. 18, L. 1989.**

Part 2

Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: **En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.**

Cross-References

Minors and adults defined, 41-1-101.

Establishment of parent-child relationship, 72-2-213.

Adopted persons included in class gift terminology, 72-2-503.

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an investigation under 40-8-122 and an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140; amd. Sec. 2, Ch. 406, L. 1987.

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1

General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

40-9-102. Grandparent visitation rights. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: **En. Sec. 2, Ch. 17, L. 1979; amd. Sec. 1, Ch. 616, L. 1983.**

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Visitation, 40-4-217.

Effect of final decree of adoption, 40-8-125.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse, Neglect, and Dependency.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

41-1-101. Minors and adults defined.
41-1-102. Periods of minority — how calculated.
41-1-103. Unborn children.

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41-1-201. Liability of minors for wrongs — exemplary damages.
41-1-202. Enforcement of minor's rights.

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41-1-401. Health professional defined.
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41-1-405. Emergencies and special situations.
41-1-406. Psychiatric or psychological counseling under urgent circumstances.
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Chapter Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Residence of minors, 1-1-215.

Youth centers — recreational facilities, 7-16-4103, 7-16-4104, 7-16-4108.

Curfew for minors, 7-32-2302.

Minor beneficiaries under PERS, 19-3-1301, 19-3-1302, 19-3-1304.

Care of children of deceased policemen and firemen, Title 19, ch. 9, 11.

Education of children, Title 20.

Minors not to engage in parimutuel betting, gambling, bingo, raffles, or sports pools, 23-4-301.

Civil liability of parent for shoplifting by minor, 27-1-718.

Banking law relating to minors, 32-1-107, 32-1-444.

Savings and loan shares held by minors, 32-2-418.

Minors' interests in credit union shares, 32-3-504, 32-3-506.

Insurance law relating to minors, 33-7-305, 33-7-506, 33-7-507, 33-15-103, 33-15-401, 33-15-502, 33-20-115, 33-20-1111, 33-22-212, 33-22-304, 33-22-604.

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parent and child, Title 40, ch. 6.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Day-care facilities, Title 52, ch. 2, part 7.

Operation of vehicles by minors, 61-5-107 through 61-5-109, 61-5-112, 61-5-202.

Child safety restraint law, 61-9-419 through 61-9-423.

Property law relating to minors, 70-1-404, 70-1-420, 70-1-422.

Guardianship, Title 72, ch. 5.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Youth trapping license, 87-2-605.

No fishing license required for minor under 15 years of age, 87-2-805.

Part 1

Minority

Part Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

41-1-101. Minors and adults defined. (1) Minors are:

(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

University students — minor defined, 20-25-501.

Civil liability of parent for shoplifting by minor, 27-1-718.

Who may contract, 28-2-201.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

Montana Youth Court Act — adult and youth defined, 41-5-103.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Hard-to-place child defined, 53-4-303.

Child safety restraint law, 61-9-419 through 61-9-423.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

Cross-References

Compensation and support of person after attaining majority, 40-6-218.

When parental authority ceases, 40-6-234.

Who may not be personal representative, 72-3-501.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Cross-References

Expected child — intent to release or consent — petition and notice, 40-6-127.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Afterborn heirs, 72-2-212.

Part 2

Civil Actions Concerning Minors

Part Cross-References

Owner's civil liability for negligent operation of boat, 23-2-505.

Montana Rules of Civil Procedure relating to children, Rules 17(c), 27(a)(2), 40, M.R.Civ.P. (see Title 25, ch. 20).

Suits on behalf of minors, 27-1-323, 27-1-512, 27-1-514.

Minors allowed to make marriage settlements, 40-2-315.

Uniform Parentage Act, Title 40, ch. 6, part 1.

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

Cross-References

Pupils — duties and sanctions, 20-5-201.

Civil liability of owner for negligent operation of boat, 23-2-505.

When exemplary damages allowed, 27-1-221.

Civil liability of parent for shoplifting by minor, 27-1-718.

Destruction of property by minor — liability of parents, 40-6-237.

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Appointment of guardian ad litem, 25-5-301.

Right of minor to bring civil action or other proceeding, 27-1-511.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Who may sue for whose seduction, 27-1-514.

Statute of Limitations — when person entitled to bring action is under a disability, 27-2-401.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Delegation of powers by parent or guardian, 72-5-103.

Guardians of minors, Title 72, ch. 5, part 2.

Protection of property of minors and persons under disability, Title 72, ch. 5, part 4.

Part 3

Power to Contract

Part Cross-References

Who may contract, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Agency, 28-10-104, 28-10-704.

Power to contract — purchase of insurance by minors, 33-15-103.

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

Cross-References

Who may appoint an agent, who may be an agent, 28-10-104.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

Cross-References

Contracts by minors, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.

Cross-References

Student financial assistance, Title 20, ch. 26.

Who may contract, 28-2-201.

Applicability of laws relating to capacity to contract — agency, 28-10-704.

Obligations of parents for the support and education of their children, 40-6-211.

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.

Cross-References

Who may contract, 28-2-201.

Personal representative — power to recover property which is subject of void or voidable transfer, 72-3-614.

Limitation of action on bond, 72-13-102.

Limitation of action for recovery of property sold by guardian, 72-13-103.

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

Contracts of persons entirely without understanding, 28-2-202.

When person of unsound mind cannot disaffirm contract, 28-2-204.

Liability for acts or debts of spouse, 40-2-106.

Earnings and accumulations of married person, 40-2-205.

Necessity determined by standard of living, 40-2-210.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and 41-3-408.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109; amd. Sec. 6, Ch. 564, L. 1983.

Cross-References

Power to contract — purchase of insurance by minors, 33-15-103.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

Discrimination — specific limits on justification, 49-2-403.

Part 4

Validity of Consent to Medical Treatment

Part Cross-References

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Health provisions relating to children, 50-1-202, 50-5-101, 50-15-101, 50-15-108, 50-15-109, 50-15-203, 50-15-302, 50-15-303, 50-17-110, 50-30-102, 50-30-201 through 50-30-220, 50-53-102.

Medical assistance for children, 53-6-101 through 53-6-104.

Treatment of developmentally disabled, Title 53, ch. 20, part 1.

Treatment of seriously mentally ill, Title 53, ch. 21, part 1.

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.

Cross-References

Licensing — practice of medicine, Title 37, ch. 3, part 3.

Licensing — dentists, Title 37, ch. 4, part 3.

Psychologists — licensing, Title 37, ch. 17, part 3.

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101; amd. Sec. 14, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(c), in two places, substituted "sexually transmitted" for "venereal".

Cross-References

When parental authority ceases, 40-6-234.

Emergency medical services, Title 50, ch. 6.

Sexually transmitted diseases, Title 50, ch. 18.

Pregnancy — serological testing, Title 50, ch. 19, part 1.

Mentally ill — voluntary admission of minors, 53-21-112.

Alcoholism and drug dependence, Title 53, ch. 24.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102; amd. Sec. 15, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "a sexually transmitted" for "venereal".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Privileges, Art. V, Montana Rules of Evidence (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.
Confidentiality of health care information, Title 50, ch. 16, part 5.
Uniform Health Care Information Act, Title 50, ch. 16, part 5.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.

Cross-References
Purchase of insurance by minors, 33-15-103.
Insurance claims and benefits, Title 33, ch. 15, part 5.
When parent not liable for support furnished child, 40-6-216.
Minor not to disaffirm certain obligations, 41-1-306.

41-1-405. Emergencies and special situations. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians, if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104.

Cross-References
Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.
Consent in general, Title 28, ch. 2, part 3.
Exemptions from licensing requirements — emergencies, 37-3-103.
Montana Abortion Control Act, Title 50, ch. 20, part 1.

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.

Cross-References

Consent in general, Title 28, ch. 2, part 3.

When parent not liable for support furnished child, 40-6-216.

Endangering the welfare of children, 45-5-622.

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: (1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Comparative negligence, 27-1-702.

CHAPTER 2

CHILD LABOR

Part 1 — Prohibited Employment of Children

41-2-101. Employment of children prohibited — when.
41-2-102 through 41-2-110 reserved.
41-2-111. Liability of parent.
41-2-112. Repealed.
41-2-113. Age certificates.
41-2-114. Enforcement.
41-2-115 through 41-2-120 reserved.
41-2-121. Penalties.

Chapter Cross-References

Duties of Department of Labor and Industry, 39-1-102.

Cooperation with federal government, 39-1-104.

Unemployment insurance — exclusion from definition of employment — child employed by parent, 39-51-204.

Workers' compensation coverage of minor employee, 39-71-602.

Workers' compensation benefits to minors, 39-71-2203.

Sheltered workshops, Title 53, ch. 7, part 2.

Part 1

Prohibited Employment of Children

Part Cross-References
Students — exclusion from PERS, 19-3-403.
Employment defined, 39-2-101.
Exclusions from minimum wage provisions, 39-3-406.

41-2-101. Employment of children prohibited — when. Any person, company, firm, association, or corporation engaged in business in this state or any agent, officer, foreman, or other employee having control or management of employees or having the power to hire or discharge employees who shall knowingly employ or permit to be employed any child under the age of 16 years to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine; mill; smelter; workshop; factory; steam, electric, hydraulic, or compressed-air railroad; or passenger or freight elevator or where any machinery is operated or for any telegraph, telephone, or messenger company or in any occupation not herein enumerated which is known to be dangerous or unhealthful or which may be in any way detrimental to the morals of said child shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

Cross-References
Department of Labor and Industry to enforce laws relating to child labor, 39-1-102.
Cooperation with federal government, 39-1-104.
Bartenders, waiters, and waitresses, age of employment, 39-2-306.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

41-2-102 through 41-2-110 reserved.

41-2-111. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of 16 years who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employment as is prohibited in 41-2-101, whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.

Cross-References
Labor law — immediate family defined, 39-33-102.
Custody, services, and earnings of child, 40-6-221.
Wages of minors, 40-6-236.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

41-2-112. Repealed. Sec. 1, Ch. 241, L. 1989.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.

41-2-113. Age certificates. Upon obtaining the age of 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom the child seeks employment. The employer, if such employment be given, must countersign the certificate and return it to the commissioner, who shall keep it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 41-2-101 any child without such certificate showing the child to be at least 16 years of age is guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than 16 years of age.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.

Cross-References

Duties of Department of Labor and Industry, 39-1-102.

Contents of apprenticeship agreement, 39-6-106.

Misdemeanor defined, 45-2-101.

41-2-114. Enforcement. To enforce this part the commissioner of labor and industry and each county attorney shall, each upon his own volition or upon the sworn complaint of any reputable citizen that this part is being violated, make prosecutions for such violations.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.

Cross-References

County Attorney — prosecutorial duties, 7-4-2712.

41-2-115 through 41-2-120 reserved.

41-2-121. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 3

CHILD ABUSE, NEGLECT, AND DEPENDENCY

Part 1 — General

41-3-101. Declaration of policy.
41-3-102. Definitions.
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41-3-104. Renumbered 41-3-1122.
41-3-105. Renumbered 41-3-1125.
41-3-106. Prosecution of offenders.
41-3-107. Interagency cooperation.
41-3-108. Child protective teams.

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41-3-201. Reports.

41-3-202. Action on reporting.
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41-3-405. Combined with 41-5-805, renumbered 41-3-1123.
41-3-406. Dispositional hearing.
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41-3-408. Limited emancipation.
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41-3-601. Short title.
41-3-602. Purpose.
41-3-603. Definitions.
41-3-604 through 41-3-606 reserved.
41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.
41-3-608. Notice.
41-3-609. Criteria for termination.
41-3-610. Review following termination.
41-3-611. Effect of decree.
41-3-612. Appeals.

Part 7 — Montana Children's Trust Fund

41-3-701. Child abuse and neglect prevention program.
41-3-702. Children's trust fund account — nonsupplantation of funds.
41-3-703. Gifts and grants to program.
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Part 11 — Youth Residential Services

41-3-1101. Establishment of substitute care for youth.
41-3-1102. Definitions.
41-3-1103. Powers and duties of department.
41-3-1104. Aftercare facilities.
41-3-1105. Transfer of custody to private agency — reports.
41-3-1106. Repealed.
41-3-1107 through 41-3-1110 reserved.

41-3-1111. Taking into custody.
41-3-1112. Petition for placement in facility.
41-3-1113. Repealed.
41-3-1114. Continuing jurisdiction of youth court.
41-3-1115. Foster care review committee.
41-3-1116 through 41-3-1120 reserved.
41-3-1121. Repealed.
41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.
41-3-1123. Investigation of parents' or guardians' financial ability — financial status report.
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41-3-1125. Recovery from parents or guardianship assets — division between state and county.
41-3-1126. Debt to state by natural or adoptive parents — limitations.
41-3-1127 through 41-3-1130 reserved.
41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds.
41-3-1132. Governmental contracts with nonprofit organizations.
41-3-1133 through 41-3-1140 reserved.
41-3-1141. License required.
41-3-1142. Issuance of license — authority of issuing agency.
41-3-1143. Penalty for failure to obtain license.

Chapter Cross-References

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Justifiable use of force with respect to children, 45-3-104, 45-3-107.

Custodial interference, 45-5-304.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Sexual abuse of children, 45-5-625.

Abortion — written notice to spouse or parent required, 50-20-107.

Welfare provisions relating to children and families, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Part 1

General

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303

by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Use of force by parent, guardian, or teacher, 45-3-107.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) "Abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Department" means the department of family services provided for in 2-15-2401.

(13) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(14) "Social worker" means an employee of the department of family services whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(16) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through

45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989.

Compiler's Comments

1989 Amendment: In definition of harm to a child's health or welfare, in (a) after "injury", deleted "including injuries sustained as a result of excessive corporal punishment" and in (b), after "committed", substituted "sexual abuse or exploitation of the child" for "a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625"; substituted definition of threatened harm to a child's health or welfare for former definition that read: ""Threatened harm" means imminent risk of harm"; in definition of person responsible for a child's welfare, after "foster parent", inserted "a staff person providing care in a day-care facility"; near middle of definition of physical injury inserted "and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment"; inserted definitions of sexual abuse and sexual exploitation; and made minor changes in phraseology. Amendment effective April 8, 1989.

Effective Date — Applicability: Section 3, Ch. 474, L. 1989, provided: "[This act] is effective on passage and approval and applies to proceedings begun on or after that date." Approved April 8, 1989.

Cross-References

Admittance of child to school, 20-5-101.

Compulsory attendance and excuses, 20-5-103.

Limitations on liability for emergency care rendered by physician, 27-1-714.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Medicine — regulation and licensing, Title 37, ch. 3.

Form, execution, and revocation of releases — termination of parents' or guardian's rights, 40-6-135.

Obligations of parents, Title 40, ch. 6, part 2.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Parent allowed to relinquish services and custody of child, 40-6-235.

Consent required for adoption, 40-8-111.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of intoxicating substance by children, 45-5-624.

Obscenity, 45-8-201.

Criminal possession of dangerous drugs, 45-9-102.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

Emergency medical services, Title 50, ch. 6.

Living wills, Title 50, ch. 9.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Child custody jurisdiction, 40-4-211.

Dispositional hearing, 41-3-406.

Priority of Youth Court hearings, 41-5-110.

Montana Youth Court — jurisdiction of the court, 41-5-203.

41-3-104. Renumbered 41-3-1122. Sec. 31, Ch. 465, L. 1983.

41-3-105. Renumbered 41-3-1125. Sec. 31, Ch. 465, L. 1983.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.

Cross-References

District Court — original jurisdiction, 3-5-302.

County Attorney — prosecutorial duties, 7-4-2712.

Incest, 45-5-507.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Criminal liability of parent or guardian for use of firearms by children under fourteen, 45-8-345.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-107. Interagency cooperation. To effectuate the purposes of this chapter, the department of family services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

History: En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987.

Cross-References

Board of Public Education — powers and duties, 20-2-121.

Montana Youth Court Act — declaration of purpose, 41-5-102.

General powers and duties of Department of Health and Environmental Sciences, 50-1-202.

Duties of Department of Family Services — child rehabilitation, 53-4-113.

Department of Family Services to assist other agencies, 53-4-116.

41-3-108. Child protective teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services in a local service area or his designee shall serve as the team's coordinator. Members shall include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a county attorney; and

(5) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

History: En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989.

Compiler's Comments

1989 Amendment: At end required team to include member knowledgeable about Indian culture and family matters when Indian child involved; and made minor changes in form.

Cross-References

Disclosure of confidential child abuse records to child protective team, 41-3-205.

Duty to strengthen child welfare services, 53-4-112.

Department of Family Services — child rehabilitation, 53-4-113.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "cause to suspect", substituted "as a result of information they receive in their professional or official capacity that a child is abused or neglected" for "that a child known to them in their professional or official capacity is an abused or neglected child"; and at end of (4) deleted "if the person came into possession of such information as a result of his treatment of the child".

Cross-References

Duties of teacher — nonpayment for failure to comply, 20-4-301.

Doctor-patient privilege, 26-1-805.

Adjudicatory hearing — temporary disposition, 41-3-404.

Standards for day care, 52-2-731.

Department of Family Services to assist other agencies, 53-4-116.

41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of family services, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989.

Compiler's Comments

1989 Amendment: In (2) inserted last sentence relating to a public school employee's participation in an interview of the child. Amendment effective July 1, 1989.

Cross-References

Remedy for parental abuse, 40-6-233.

Emergency protective service, 41-3-301.

Responsibility of providing protective services, 41-3-302.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Child rehabilitation — duties of Department, 53-4-113.

41-3-203. Immunity from liability. Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979.

Cross-References

Immunity and responsibility of psychologist, physician, or health care facility, 41-1-407.

Records and reports required of health care facilities — confidentiality, 50-5-106.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local affiliate of the department at the time the written confirmation report is sent or as soon thereafter as is possible.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987.

Cross-References

Contents of writings, recordings, and photographs, Art. X, Montana Rules of Evidence (see Title 26, ch. 10).

Validity of consent of minor for health services, 41-1-402.

Responsibility of providing protective services, 41-3-302.

Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115; or

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 110 inserted (3)(j) authorizing disclosure to youth probation officer; and made minor changes in form. Amendment effective March 15, 1989.

Chapter 126 inserted (3)(m) relating to a school employee participating in an interview of a child. Amendment effective July 1, 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Doctor-patient privilege, 26-1-805.

Confidential communications by student to employee of educational institution, 26-1-809.

Child protective teams, 41-3-108.

Foster Care Review Committee, 41-3-1115.

Youth Court — preliminary investigation and disposition, 41-5-301.

Youth Court — confidentiality of proceedings — records, Title 41, ch. 5, part 6.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979.

Cross-References

Homicide, Title 45, ch. 5, part 1.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

Misdemeanor — no penalty specified, 46-18-212.

41-3-208. Rulemaking authority. (1) The department of family services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter or 41-3-1123.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Protective Care

Part Cross-References

Establishment of youth guidance center, 7-16-2102 through 7-16-2104.

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of family services, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of family services shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

Declaration of policy, 41-3-101.

Action on reporting, 41-3-202.

Abuse, neglect, and dependency petitions, 41-3-401.

Foster homes and other private institutions, Title 41, ch. 3, part 5.

Taking into custody, 41-3-1111.

41-3-302. Responsibility of providing protective services. (1) The department of family services shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981; amd. Sec. 42, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Action on reporting, 41-3-202.

Order for immediate protection of youth, 41-3-403.

Taking into custody, 41-3-1111.

County departments of public welfare, Title 53, ch. 2, part 3.

Child rehabilitation — duties of department, 53-4-113.

41-3-303. Guardian ad litem. (1) In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct such investigation as he considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child, his siblings, and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform such other duties as directed by the court.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985.

Cross-References

Guardian ad litem, 25-5-301.
Representation of child, 40-4-205.
When parental authority ceases, 40-6-234.
Enforcement of minor's rights, 41-1-202.
Guardian ad litem defined, 41-3-603.
Appointment of guardian ad litem, 41-5-512.
Guardians of minors, Title 72, ch. 5, part 2.

Part 4

Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court

shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem — appointment, 25-5-301.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Representation of child, 40-4-205.

Best interest of child, 40-4-212, 40-6-130.

Consent required for adoption, 40-8-111.

Enforcement of minor's rights, 41-1-202.

Prosecution of offenders — abuse, neglect, dependency, 41-3-106.

Action on reporting, 41-3-202.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Appointment of guardian ad litem, 41-5-512.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

Child rehabilitation — duties of department, 53-4-113.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable

cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987.

Cross-References

Duties of Attorney General, 2-15-501.

Affidavits, Title 26, ch. 1, part 10.

Action on reporting, 41-3-202.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, shall be served by a peace officer or a representative of the department of family services on the person or persons named therein. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon thereafter as possible.

(c) The order shall require the person served to comply immediately with the terms thereof or to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of family services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of family services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Contempts, Title 3, ch. 1, part 5.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).
Best interests of child, 40-4-212, 40-6-130.
Remedy for parental abuse, 40-6-233.
Psychiatric or psychological counseling under urgent circumstances, 41-1-406.
Action on reporting, 41-3-202.
Responsibility of providing protective services, 41-3-302.
Taking into custody, 41-3-1111.
Child rehabilitation — duties of Department, 53-4-113.
Department to accept custody of children committed by courts, 53-4-115.

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985.

Cross-References
Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).
When parent may bring action for the exclusive control of children — decree, 40-6-223.
Remedy for parental abuse, 40-6-233.
Admissibility and preservation of evidence, 41-3-204.
Payment for support of youth in need of care — reimbursement by county, 41-3-1122.
Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-405. Combined with 41-5-805, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-3-406. Dispositional hearing. If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(1) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(2) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(3) transfer legal custody to any of the following:

(a) department of family services;

(b) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(c) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(4) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(5) order such further care and treatment as the court may deem in the best interest of the youth.

History: **En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.**

Cross-References

Remedy for parental abuse, 40-6-233.
When parental authority ceases, 40-6-234.
Jurisdiction and venue, 41-3-103.
Responsibility of providing protective services, 41-3-302.
Order for financial support, 41-3-1124.
Recovery from parents or guardianship assets — division between state and county, 41-3-1125.
Priority of Youth Court hearings, 41-5-110.
Endangering the welfare of children, 45-5-622.
Department to accept custody of children committed by courts, 53-4-115.
Guardians of minors, Title 72, ch. 5, part 2.

41-3-407. Combined with 41-5-806, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-3-408. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-1124 and the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation; or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices.

History: **En. Sec. 5, Ch. 564, L. 1983.**

Cross-References

Schools — compulsory attendance and excuses, 20-5-103.

Obligations of parents, Title 40, ch. 6, part 2.

Minor cannot disaffirm certain obligations, 41-1-306.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Definitions — limited emancipation, 41-3-102.

41-3-409. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law. An appeal does not stay the order or decree appealed from; however, the supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

History: **En. Sec. 3, Ch. 463, L. 1987.**

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Part 5

Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part Compiler's Comments

Renumbered Sections:

41-3-501. Renumbered 41-3-1102(3), (4). Sec. 31, Ch. 465, L. 1983.

41-3-502. Renumbered 41-3-1141. Sec. 31, Ch. 465, L. 1983.

41-3-503. Renumbered 41-3-1142. Sec. 31, Ch. 465, L. 1983.

41-3-504. Renumbered 41-3-1143. Sec. 31, Ch. 465, L. 1983.

Part 6

Parent-Child Legal Relationship Termination

Part Cross-References
Relinquishment of parental rights, 40-6-135.
Adoption — effect of final decree, 40-8-125.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".
History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.
History: En. Sec. 2, Ch. 420, L. 1981.

Cross-References
Best interest of child, 40-4-212.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a petition for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.
History: En. Sec. 3, Ch. 420, L. 1981; amd. Sec. 1, Ch. 1, L. 1983; amd. Sec. 1, Ch. 388, L. 1985.

Cross-References
Guardian ad litem, Title 25, ch. 5, part 3; 41-3-303.
Enforcement of minor's rights, 41-1-202.

41-3-604 through 41-3-606 reserved.

41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

History: En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem, Title 25, ch. 5, part 3.

Trial by jury, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

History: En. Sec. 5, Ch. 420, L. 1981.

Cross-References

Service of process and other papers, Title 25, ch. 3.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents

renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

History: En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985.

Cross-References

Best interest of child, 40-4-212.

UPA — grounds for termination of father's rights, 40-6-129.

Treatment of mentally ill, Title 53, ch. 21.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination to determine if the child has been permanently placed.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. If the child is not in a permanent placement at the time of the review hearing, the guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

History: En. Sec. 7, Ch. 420, L. 1981; amd. Sec. 4, Ch. 388, L. 1985.

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-610.

History: En. Sec. 8, Ch. 420, L. 1981; amd. Sec. 99, Ch. 370, L. 1987.

Cross-References

Consent required for adoption, 40-8-111.

Intestate succession, Title 72, ch. 2, part 2.

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: En. Sec. 9, Ch. 420, L. 1981.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Priority of Youth Court hearings, 41-5-110.

Part 7

Montana Children's Trust Fund

Part Cross-References

Montana children's trust fund board, 2-15-2402.

Income tax deduction for contribution to state child abuse and neglect prevention program, 15-30-155 through 15-30-157.

41-3-701. Child abuse and neglect prevention program. (1) The Montana children's trust fund board, provided for in 2-15-2402, shall use the money in the children's trust fund account established by 41-3-702 to fund services and activities operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect.

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement this section and 41-3-703 and 41-3-704.

History: En. Sec. 3, Ch. 610, L. 1985.

41-3-702. Children's trust fund account — nonsupplantation of funds. (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the

Montana children's trust fund board, provided for in 2-15-2402, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of family services.

History: **(1)En. Sec. 1, Ch. 610, L. 1985; (2)En. Sec. 6, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.**

Cross-References

Fund structure, 17-2-102.

41-3-703. Gifts and grants to program. The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants must, upon receipt, be paid into the children's trust fund account established by 41-3-702.

History: **En. Sec. 4, Ch. 610, L. 1985.**

41-3-704. Program costs. The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of family services to the extent possible.

History: **En. Sec. 5, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.**

Parts 8 through 10 reserved

Part 11

Youth Residential Services

Part Cross-References

Place of shelter care or detention, 41-5-306.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations, counties, and the department of family services.

History: **En. Sec. 6, Ch. 465, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 434, L. 1989.**

Compiler's Comments

1989 Amendment: Near end, after "local nonprofit corporations", inserted "counties".

Cross-References

Duty to strengthen child welfare services, 53-4-112.

41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(4) "Person" means any individual, partnership, voluntary association, or corporation.

(5) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(6) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

(7) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(8) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

History: (1), (2), (5) thru (9)En. Sec. 7, Ch. 465, L. 1983; (3), (4)En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981; amd. Sec. 16, Ch. 465, L. 1983; MCA 1981, 41-3-501; redes. 41-3-1102 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 1, Ch. 531, L. 1985; amd. Sec. 46, Ch. 609, L. 1987.

Cross-References

Definition of community residential facility, 76-2-411.

41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and detention facilities and services for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all detention facilities as defined in 41-5-103, youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities.

History: **En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985; amd. Sec. 47, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1989.**

Compiler's Comments

1989 Amendment: In (1)(a), after "child-care agencies", inserted "and detention facilities and services" and at end inserted reference to 41-5-103; and in (1)(b) inserted "detention facilities as defined in 41-5-103".

Cross-References

Administrative duties of Department, 53-4-111.

41-3-1104. Aftercare facilities. The department of family services may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department.

History: **En. Sec. 26, Ch. 465, L. 1983; amd. Sec. 3, Ch. 531, L. 1985; amd. Sec. 48, Ch. 609, L. 1987.**

Cross-References

Establishment of juvenile correction facilities, 53-30-202.

Youth aftercare agreement, 53-30-226.

41-3-1105. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this part, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227; MCA 1981, 41-5-804; redes. 41-3-1105 by Sec. 31(4), Ch. 465, L. 1983.

41-3-1106. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. Sec. 9, Ch. 465, L. 1983.

41-3-1107 through 41-3-1110 reserved.

41-3-1111. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Responsibility of providing protective services, 41-3-302.

Method of arrest, 46-6-104.

Arrest by a peace officer, Title 46, ch. 6, part 4.

Detention of youth who violates aftercare agreement, 53-30-228.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-3-1112. Petition for placement in facility. Any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court or any person under the age of 18 years may petition the youth court of a district in which a licensed youth care facility has been established to be placed in such a facility for any period of time up to the person's 21st birthday.

History: En. Sec. 23, Ch. 465, L. 1983; amd. Sec. 49, Ch. 609, L. 1987.

41-3-1113. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. Sec. 24, Ch. 465, L. 1983.

41-3-1114. Continuing jurisdiction of youth court. The youth court committing a delinquent youth or a youth in need of supervision to the department of family services retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction.

History: En. Sec. 25, Ch. 465, L. 1983; amd. Sec. 50, Ch. 609, L. 1987.

Cross-References

Retention of jurisdiction, 41-5-205.

41-3-1115. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Disclosure of confidential child abuse records to Foster Care Review Committee, 41-3-205.

Duty to strengthen child welfare services, 53-4-112.

41-3-1116 through 41-3-1120 reserved.

41-3-1121. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236; amd. Sec. 4, Ch. 297, L. 1981; amd. Sec. 10, Ch.

465, L. 1983; MCA 1981, 41-5-801; redes. 41-3-1121 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 9, Ch. 15, L. 1985.

41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed by the department.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979; amd. Sec. 1, Ch. 297, L. 1981; amd. Sec. 11, Ch. 465, L. 1983; MCA 1981, 41-3-104; redes. 41-3-1122 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 4, Ch. 531, L. 1985; amd. Sec. 52, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

Financial responsibility — interstate placement of children, 41-4-102.

Montana Youth Court Act — place of shelter care or detention, 41-5-306.

Duty to strengthen child welfare services, 53-4-112.

41-3-1123. Investigation of parents' or guardians' financial ability — financial status report. (1) (a) Whenever a disposition under 41-3-404 involves placement in a youth care facility and the department is responsible for all or part of the cost of such placement, the court shall order the department to conduct an investigation of the financial status of the youth's parents or guardianship assets.

(b) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a youth care facility or youth correctional facility and the department is responsible for all or part of the cost of such placement, the court shall order the probation officer to conduct an investigation of the financial status of the youth's parents or guardianship assets.

(2) (a) Upon receipt of the order, the department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian

of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth:

(i) in the youth care facility or youth correctional facility; or

(ii) as a child of limited emancipation, as may be ordered under 41-3-406.

(b) A written report of the investigation shall be filed with the court having jurisdiction and the department, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing.

History: 41-3-405 En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979; 41-5-805 En. Sec. 11, Ch. 567, L. 1979; amd. Secs. 12, 13, Ch. 465, L. 1983; 41-3-405 and 41-5-805 combined by Sec. 31(3)(a), Ch. 465, L. 1983; redes. 41-3-1123 by Sec. 31(3)(c), Ch. 465, L. 1983; amd. Sec. 2, Ch. 564, L. 1983; amd. Sec. 53, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

Action on reporting, 41-3-202.

Interstate placement of children — financial responsibility, 41-4-102.

Investigation of ability to pay, 53-1-406.

Child rehabilitation — duties of Department, 53-4-113.

41-3-1124. Order for financial support. (1) Upon receipt of a financial status report pursuant to 41-3-1123, a court providing for disposition of a youth under 41-3-406, 41-5-523, or 41-5-524 shall hold a hearing to determine the ability of the youth's parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-3-406 or 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution.

(2) In addition to the report prepared under 41-3-1123, any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the order may be modified.

History: 41-3-407 En. Sec. 8, Ch. 567, L. 1979; 41-3-407 amd. Sec. 14, Ch. 465, L. 1983, and Sec. 4, Ch. 564, L. 1983; 41-5-806 En. Sec. 12, Ch. 567, L. 1979; 41-3-407 and 41-5-806 combined by Sec. 31(3)(b), Ch. 465, L. 1983; redes. 41-3-1124 by Sec. 31(3)(c), Ch. 465, L. 1983.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

Interstate placement of children — financial responsibility, 41-4-102.

Liability of resident or responsible person for assessed charges, 53-1-409.

41-3-1125. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents or guardianship assets of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from the parents or guardianship assets when a child is placed in a youth care facility shall be transmitted to the department. The department shall then pay to the county one-half of the amount so collected.

History: (1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313 by Sec. 9, Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979; amd. Sec. 15, Ch. 465, L. 1983; MCA 1981, 41-3-105; redes. 41-3-1125 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

Interstate placement of children — financial responsibility, 41-4-102.

41-3-1126. Debt to state by natural or adoptive parents — limitations. If a child has been placed in substitute care, as defined in 41-5-103 and 41-3-1102, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

History: En. Sec. 10, Ch. 609, L. 1987.

Cross-References

Child support — orders to address health insurance, 40-4-204.

41-3-1127 through 41-3-1130 reserved.

41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds. Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide.

History: En. Sec. 18, Ch. 465, L. 1983.

41-3-1132. Governmental contracts with nonprofit organizations. (1) The department may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and is authorized to expend such money as is appropriated or available therefor. Such contracts shall be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized,

at their own expense, to provide funds, materials, facilities, and services for community-based services.

History: En. Sec. 19, Ch. 465, L. 1983.

Cross-References

Public contracts generally, Title 18, ch. 1.

41-3-1133 through 41-3-1140 reserved.

41-3-1141. License required. No person shall maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license in writing from the department. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 20, Ch. 465, L. 1983; MCA 1981, 41-3-502; redes. 41-3-1141 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1142. Issuance of license — authority of issuing agency. The department is hereby authorized to issue licenses to persons operating youth care facilities and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of such facilities for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed facilities through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable opportunity for observing the operation of such homes.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 21, Ch. 465, L. 1983; MCA 1981, 41-3-503; redes. 41-3-1142 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

One-step licensing required, 50-8-102.

Administrative duties of Department, 53-4-111.

Duty to strengthen child welfare services, 53-4-112.

Child rehabilitation — duties of Department, 53-4-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1143. Penalty for failure to obtain license. Any person who maintains or operates a youth care facility or assists in operating or maintaining such facility without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319; amd. Sec. 22, Ch. 465, L. 1983; MCA 1981, 41-3-504; redes. 41-3-1143 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Misdemeanor defined, 45-2-101.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

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Chapter Cross-References

Adoption of children, Title 40, ch. 8, part 1.

Department to supervise importation and exportation of children, 53-4-114.

Subsidized adoption of hard-to-place children, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

Part 1

Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party

state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

Cross-References

Effect of judicial record of another state, 26-3-203.

Interagency cooperation, 41-3-107.

Youth residential services, Title 41, ch. 3, part 11.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Custodial care, Title 41, ch. 5, part 8.

Administrative duties of Department, 53-4-111.

Department to assist other agencies, 53-4-116.

Subsidized adoption, Title 53, ch. 4, part 3.

Child adoption agencies, Title 53, ch. 4, part 4.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act) and 41-3-1122, 41-3-404, and 41-3-1123 also may be invoked.

History: **En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979; amd. Sec. 31, Ch. 465, L. 1983.**

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of family services, and said department shall receive and act with reference to notices required by said Article III.

History: **En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403; amd. Sec. 11, Ch. 609, L. 1987.**

Cross-References

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Department to supervise importation and exportation of children, 53-4-114.

Department to assist other agencies, 53-4-116.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of family services.

History: **En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404; amd. Sec. 11, Ch. 609, L. 1987.**

Cross-References

Administrative duties of Department, 53-4-111.

Child rehabilitation — duties of Department, 53-4-113.

Department to supervise importation and exportation of children, 53-4-114.

Department to assist other agencies, 53-4-116.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: **En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.**

Cross-References

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-1141, 41-3-1142, and 53-4-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: **En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406; amd. Sec. 31, Ch. 465, L. 1983.**

Cross-References

Inspection by employees of other departments, 50-8-105.

41-4-107. Certain laws not applicable. The provisions of 53-4-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

Cross-References

Jurisdiction and venue in abuse, neglect, and dependency cases, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

Cross-References

Policymaking authority and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

CHAPTER 5

YOUTH COURT ACT

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Chapter Cross-References

Civil liability of parent for shoplifting by minor, 27-1-718.

Crimes, Title 45.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Use of firearms by children under fourteen prohibited, 45-8-344.

Department of Family Services — youthful offenders, Title 53, ch. 30, part 2.

Part 1

General

Part Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Youthful offenders, Title 53, ch. 30, part 2.

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Action on reporting, 41-3-202.

Abuse, neglect, or dependency proceedings, Title 41, ch. 3, part 4.

Recognition of parental control of children, 53-4-102.

41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Foster home" means a private residence licensed by the department for placement of a youth.

(7) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(8) "Judge", when used without further qualification, means the judge of the youth court.

(9) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(10) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(11) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(12) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(13) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(14) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents, foster parents, physical custodian, or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(15) "Youth in need of care" means a youth as defined in 41-3-102.

(16) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(17) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(18) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena.

(19) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(20) "Detention" means the temporary substitute care of youth in physically restricting facilities.

(21) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(24) "Serious juvenile offender" means a youth who has committed an offense against the person, an offense against property, or an offense involving dangerous drugs which would be considered a felony offense if committed by an adult.

History: Ap. p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap. p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987.

Cross-References

Minors and adults defined, 41-1-101.

Youth residential services, Title 41, ch. 3, part 11.

Guardians of minors, Title 72, ch. 5, part 2.

41-5-104. County commissioners authorized to provide funds. (1) The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b).

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives, which committee shall be designated as a youth court committee. This committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240.

Cross-References

Place of shelter care or detention, 41-5-306.

Appointment of probation officers, 41-5-701.

41-5-106. Order of adjudication — noncriminal. No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

Cross-References

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Right to counsel, 41-5-511.

Admissibility of confession or illegally seized evidence, 41-5-514.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Law enforcement records, 41-5-602.

Youth Court records, 41-5-603.

41-5-107. Administration. The provisions of Title 41, chapter 3, part 11, govern the administration of this chapter.

History: En. Sec. 30, Ch. 465, L. 1983.

41-5-108 and 41-5-109 reserved.

41-5-110. Youth court hearings — priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

History: En. Sec. 15, Ch. 515, L. 1987.

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985.

Cross-References

District Court judges, Title 3, ch. 5, part 2.

Proceeding on petition, Title 41, ch. 5, part 5.

Appointment of probation officers, 41-5-701.

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987.

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage violations alleged to have been committed by a youth.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979.

Cross-References

Municipal Courts — jurisdiction, 3-6-103.

Justices' Courts — criminal jurisdiction, 3-10-303.

City Courts — concurrent jurisdiction, 3-11-102.

Jurisdiction of courts — alcohol violations, 16-6-201.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Priority of Youth Court hearings, 41-5-110.

Criminal possession of toxic substances, 45-9-121.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

District Court original jurisdiction, 3-5-302.

Jurisdiction and venue, 41-3-103.

Place of trial — change of venue, 46-3-101.

Venue for certain specific crimes, Title 46, ch. 3, part 2.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time the youth is discharged by the department; and

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987.

Cross-References

Minors and adults defined, 41-1-101.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Disposition permitted under informal adjustment, 41-5-403.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included in 45-9-101;

(I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 53-30-212; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained in an adult detention facility before final disposition of the case unless the youth court judge determines that:

(a) the youth facilities do not provide adequate security; and

(b) detention in the adult facility is in an area physically, aurally, and visually separate from that of adults.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100, Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (9) relating to detention of a youth in an adult detention facility.

Cross-References

Petition — form and content, 41-5-501.

Right to counsel, 41-5-511.

Law enforcement records, 41-5-602.

Youth Court records, 41-5-603.

Montana State Prison, Title 53, ch. 30, part 1.

Commutation of sentence to state prison and transfer to juvenile correctional facility, 53-30-212.

41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Mileage — allowance, 2-18-503.

Mileage computed by shortest traveled route, 2-18-504.

Clerk of District Court — duties relating to jurors and witnesses, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.
Copies of proceedings, 3-5-604.
Guardian ad litem, 25-5-301, 41-3-303.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).
Right to counsel, 41-5-511.
Appointment of guardian ad litem, 41-5-512.
Remuneration of appointed counsel, 46-8-201.

Part 3

Detention Procedure

Part Cross-References
Juvenile detention center standards, 7-32-2244.

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989.

Compiler's Comments

1989 Amendment: In (7) substituted "7 working days" for "5 working days". Amendment effective July 1, 1989.

Cross-References

Subpoena for attendance of witnesses, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Proceeding on petition, Title 41, ch. 5, part 5.

Powers and duties of probation officers, 41-5-703.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. *(Temporary)* **Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, the youth shall be informed of his constitutional rights and his rights under this chapter.

(4) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(5) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(6) If it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. If probable cause is not found, the youth must be immediately released.

41-5-303. *(Effective July 1, 1991)* **Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been

held by the court, a justice of the peace, a municipal or city judge, or a magistrate to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.

(3) At the probable cause hearing, the youth shall be informed of his constitutional rights and his rights under this chapter.

(4) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(5) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(6) If it is determined that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306 but may not be placed in a jail or other facility for adults. If probable cause is not found, the youth must be immediately released.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989.

Compiler's Comments

1989 Amendment: In (2), in first sentence after "court", inserted "a justice of the peace, a municipal or city judge, or a magistrate" and inserted second sentence relating to a record of the hearing; in (3) substituted "the youth shall be informed" for "the court shall inform the youth"; in (5) substituted "a guardian ad litem may be appointed" for "the court may appoint a guardian ad litem"; and in (6), near beginning of first sentence, substituted "it is determined" for "the court determines" and in last sentence substituted "probable cause is not found" for "the court does not find probable cause". Amendment effective July 1, 1989.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Taking into custody, 41-3-1111.

Right to counsel, 41-5-511.

Persons to be advised of rights, 41-5-515.

Waiver of counsel, 46-8-102.

41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.

(3) Fingerprint records and photographs may be used by the originating agency for comparison and identification purposes in any other investigation.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987.

Cross-References

Law enforcement records, 41-5-602.

Disposition of records, 41-5-604.

41-5-305. Detention and shelter care of youth. (1) After a probable cause hearing provided for in 41-5-303, a youth may not be placed in a detention facility unless:

(a) he has allegedly committed an act which if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) he has escaped from a correctional or detention facility;

(c) he has violated a valid court order or an aftercare agreement;

(d) his detention is required to protect persons or property;

(e) there is good reason to believe the youth will not appear for court proceedings as ordered;

(f) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(g) there are not adequate assurances that he will appear for court when required; or

(h) he meets additional criteria for detention established by the youth court in the judicial district that has current jurisdiction over him.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Protective care, Title 41, ch. 3, part 3.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Shelter care and detention facilities, 41-5-802.

Interstate Compact on Juveniles, Title 41, ch. 6, part 1.

41-5-306. *(Temporary)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), in a detention facility, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically and visually separate and removed from that of adults. *(Terminates July 1, 1991—sec. 14, Ch. 434, L. 1989.)*

41-5-306. *(Effective July 1, 1991)* **Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a detention facility as defined in 41-5-103.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendment — Purported Amendment: In (3), after "detention facility", inserted "as defined in 41-5-103". In (3) of temporary version inserted "aurally", but effective dates and termination dates prohibit this amendment from becoming effective. Amendment effective July 1, 1991. Temporary version terminates July 1, 1991.

Cross-References

Juvenile detention center standards, 7-32-2244.

Shelter care and detention facilities, 41-5-802.

Corrections — youthful offenders, Title 53, ch. 30, part 2.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court,

then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213.

Cross-References

Powers and duties of probation officers, 41-5-703.

Shelter care and detention facilities, 41-5-802.

Release by officer of person arrested, 46-6-403.

Notice to appear, 46-6-404.

Release on own recognizance, 46-9-111.

41-5-308. Placement of youth before probable cause hearing. (1) Before the probable cause hearing, a youth alleged to be a delinquent youth may be held in a jail or other facility for adults only if:

(a) the facilities in 41-5-306 are not available or do not provide adequate security;

(b) the placement is in an area physically, aurally, and visually separate from those of adults; and

(c) it appears that public safety and protection reasonably require the youth to be held.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with a crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility.

History: En. Sec. 2, Ch. 475, L. 1987; amd. Sec. 6, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "hearing", substituted "a youth alleged to be a delinquent youth" for "a youth, except for a youth alleged to be a youth in need of care"; and in (1)(b) inserted "aurally".

41-5-309. Bail. A youth placed in a detention or shelter care facility may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

41-5-310 through 41-5-314 reserved.

41-5-315. State funding for detention facilities or services. (1) To the extent that funds are appropriated under 41-5-316, a county may apply to the department for funds to assist in the purchase, construction, maintenance, or operation of detention facilities or services.

(2) A county requesting funds shall submit to the department a written plan describing the facilities or services to be funded.

(3) The department shall evaluate the plan to determine if funding is appropriate. In evaluating the plan, the department shall consider:

(a) whether each facility is licensed or otherwise approved by the department;

(b) the estimated number of youths expected to use each facility or service;

(c) the cost of operating each facility or providing the service;

(d) the review of a written plan by the county's local youth services advisory council provided for in 52-1-203; and

(e) any other standards adopted by rule by the department.

History: **En. Sec. 12, Ch. 434, L. 1989.**

Cross-References

Procedures for distributing funds for detention facilities and services — rules, 41-5-809.

41-5-316. Detention facility and service fund. (1) The legislature may appropriate funds to the department to implement 41-5-315.

(2) The department shall maintain a detention facility and service fund containing funds appropriated under subsection (1).

(3) Each fiscal year, the department shall reserve an amount equal to 10% of the previous year's appropriation under subsection (1) for distribution to counties experiencing financial emergencies in providing detention facilities and services. A county shall apply for emergency funding under this subsection in accordance with rules adopted by the department.

History: **En. Sec. 13, Ch. 434, L. 1989.**

Cross-References

Procedures for distributing funds for detention facilities and services — rules, 41-5-809.

Part 4

Informal Proceeding

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2).**

Cross-References

Youth Court Judge, 41-5-201.

Jurisdiction of the court, 41-5-203.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Policy to protect confidentiality in certain relations, 26-1-801.

Confidential communications made to public officer, 26-1-810.

41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth for substitute care into a youth care facility as defined in 41-3-1102 and as determined by the department;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth as determined by the department;

(d) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987.

Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Retention of jurisdiction, 41-5-205.

Youthful offenders — Department of Family Services, Title 53, ch. 30, part 2.

Part 5

Proceeding on Petition

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Jurisdiction of the court, 41-5-203.

Duty of court at initial appearance, 46-7-102.

Form of charge, 46-11-401.

41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.; Title 46, ch. 22.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Shelter care and detention facilities, 41-5-802.

Summons, Title 46, ch. 6, part 3.

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the

youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: **En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.**

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Parent may relinquish services and custody of child, 40-6-235.

Court costs and expenses, 41-5-207.

When summons may be issued — service, 46-6-301.

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987.**

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Representation of child, 40-4-205.

Right to counsel, 46-8-101.

Waiver of counsel, 46-8-102.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).**

Cross-References

Appointment of guardian ad litem, 25-5-301.

Parties to paternity proceedings, 40-6-110.

Guardian ad litem, 41-3-303.

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).**

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time, Rule 403, Montana Rules of Evidence (see Title 26, ch. 10).

Waiver of privilege by voluntary disclosure, Rule 503, Montana Rules of Evidence (see Title 26, ch. 10).

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Search and seizure — legality and admissibility, Title 46, ch. 5, part 1.

Testimony of person legally accountable, 46-16-213.

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Rights of youth upon apprehension, 41-5-303.

Duty of court at initial appearance, 46-7-102.

41-5-516. Repealed. Sec. 16, Ch. 515, L. 1987.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979; amd. Sec. 1, Ch. 158, L. 1983.

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on

all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Sittings of court — when private, 3-1-313.
Copies of proceedings, 3-5-604.
Reporter's report prima facie evidence, 3-5-612.
Publicity, 41-5-601.

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-3-1123 and 41-3-1124.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include but not be limited to the

social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987.

Cross-References

Sittings of court — when private, 3-1-313.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Subpoena of witnesses, 46-11-313.

41-5-523. *(Temporary)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

41-5-523. *(Effective July 1, 1991)* **Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home; provided, however, that:

(i) in the case of a youth in need of supervision, the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a youth correctional facility if the judge finds that such placement is necessary for the protection of the public;

(c) order restitution by the youth or his parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

(i) order such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision may not be placed in a youth correctional facility.

(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.

(4) At any time after the youth has been taken into custody and before final disposition, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The county commissioners are responsible for the cost of the evaluation and may contract with the department or other public or private agencies to obtain evaluation services.

(5) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(6) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(7) Whenever the court commits a youth to the department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 172 in (1)(b) substituted language authorizing Youth Court to commit youth to Department upon court determination for former language requiring Department, after commitment of youth and consideration of committee recommendations, to determine appropriate placement, supervision, and rehabilitation; in (1)(b)(i), after "supervision", deleted language prohibiting placement of youth in state youth correctional facility and in two places substituted "youth" for "child"; in (1)(b)(ii), after "who is", inserted "determined by the court to be", after "placed in" substituted "a youth correctional facility" for "physical confinement in an appropriate facility only", and after "such" substituted "placement" for "confinement"; deleted (1)(b)(iii) prohibiting court from holding youth in confinement longer than sentence imposed on convicted adult; deleted (1)(b)(iv) referring to disposition of youth under supervision of probation officer; deleted (1)(c) concerning Departmental approval for further youth care, treatment, or evaluation; in (1)(i) inserted language authorizing court to order further care, treatment, evaluation, or relief funded upon Departmental approval; in (2) inserted introductory clause requiring Department to determine placement and rehabilitation program for youth committed to Department; inserted (2)(a) through (2)(c) establishing limitation on youth placement; inserted (3) requiring Departmental supervision upon placement; deleted former (4) prohibiting commitment or transfer of youth to penal institution or adult facility; in (7), after "court", substituted "commits a youth to the" for "vests legal custody in an agency, institution, or"; and deleted former (7) describing form for order of commitment to Department. Amendment effective March 20, 1989.

Chapter 210 inserted (1)(j) relating to committing the youth to a mental health facility. Amendment effective July 1, 1989.

Chapter 434 in (4), near beginning after "custody", inserted "and before final disposition", near end of first sentence, after "evaluated", deleted "by the department", and substituted last sentence relating to County Commissioners' responsibility for cost of evaluation and authority to contract for services for "The department shall determine the place and manner of evaluation." Amendment effective July 1, 1991.

Chapter 616 in former (1)(c) (deleted by Ch. 172 but substantively identical to codified part of subsection (1)(i)), at end of first sentence, inserted exception clause providing that youth may not be placed in residential treatment facility by Youth Court but only by Department. Amendment effective July 1, 1989.

Cross-References

Order for financial support, 41-3-1124.

Retention of jurisdiction, 41-5-205.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Youthful offenders, Title 53, ch. 30, part 2.

Youth forest camps and work programs, 53-30-205.

Transfer of child to other facility or institution, 53-30-211.

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Liability of minor or person of unsound mind for own torts, 27-1-711.

Order for financial support, 41-3-1124.

Retention of jurisdiction, 41-5-205.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-525. Youth placement committees — composition. (1) In each judicial district, the department shall establish a youth placement committee for the purposes of recommending an appropriate placement of a youth referred to the department under 41-5-403 or committed to the department under 41-5-523.

(2) The committee consists of not less than five members, appointed by the department, and must include:

(a) a representative of the department;

(b) a representative of a county department of public welfare;

(c) a youth probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district; and

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

(3) Committee members serve without compensation.

History: En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989.

Compiler's Comments

1989 Amendment: At end of (2) required committee to include member knowledgeable about Indian culture and family matters when Indian child involved; and made minor changes in form.

41-5-526. Duties of the youth placement committee. A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian.

(5) review temporary and emergency placements as required under 41-5-528; and

(6) conduct placement reviews as requested by the department.

History: En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning of (4), after "placement for the youth", deleted "in a licensed facility" and inserted last sentence that read: "A committee shall consider placement in a licensed facility, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian"; and made minor change in phraseology. Amendment effective April 1, 1989.

41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

(2) If the department accepts the committee's recommendation, the youth must be placed according to the recommendation.

(3) If the department rejects the committee's recommendation, it shall promptly notify the committee in writing of the reasons for rejecting the recommendation. The department shall send a copy of the notice to the appropriate youth court judge.

(4) After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.

(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.

(6) If the department rejects the committee's recommendation for alternative placement, the department shall promptly notify the committee in writing of the reasons for rejecting the recommendation and shall determine an appropriate placement for the youth. The youth must be placed as determined by the department.

History: En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989.

Compiler's Comments

1989 Amendment: At end of first sentence of (6) inserted "shall determine an appropriate placement for the youth" and in second sentence, after "placed", deleted "in an appropriate facility"; and made minor changes in punctuation. Amendment effective April 1, 1989.

41-5-528. Temporary and emergency placements — limit. (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-527.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the department in accordance with 41-5-527.

History: En. Sec. 18, Ch. 609, L. 1987.

41-5-529. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

History: En. Sec. 19, Ch. 609, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

41-5-530 reserved.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

Cross-References

Motion for new trial, Title 46, ch. 16, part 7.

Appellate review of legal sentences, Title 46, ch. 18, part 9.

Postconviction hearing, Title 46, ch. 21.

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

Cross-References

Supreme Court — appellate jurisdiction, 3-2-203.

Appeals, Title 46, ch. 20.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.

Cross-References

Petition — form and content, 41-5-501.

Powers and duties of probation officers, 41-5-703.

Arrest when violations of probation alleged, 46-23-1012.

Action of court after arrest, 46-23-1013.

Report to and action by the Board, 46-23-1025.

Part 6

Confidentiality of Proceedings — Records

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

41-5-601. Confidentiality. (1) No information shall be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of any youth who admits violating or is adjudicated as having violated 45-5-624 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

History: En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981; amd. Sec. 10, Ch. 15, L. 1985; amd. Sec. 1, Ch. 462, L. 1987; amd. Sec. 12, Ch. 515, L. 1987.

Cross-References

Sittings of court — when private, 3-1-313.

Child abuse, neglect, and dependency — confidentiality of case records, 41-3-205.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney; or

(h) the youth, his parent, guardian, or counsel.

History: En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981; amd. Sec. 63, Ch. 609, L. 1987.

Cross-References

Fingerprints and photographs, 41-5-304.

Records and reports of traffic convictions, Title 61, ch. 11.

41-5-603. Youth court and department records. (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: **En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Copies of proceedings, 3-5-604.

Confidential communications made to public officer, 26-1-810.

Presentence investigation, 46-18-111.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

41-5-604. Disposition of records. (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section shall not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Minors and adults defined, 41-1-101.

Continuing jurisdiction of Youth Court, 41-3-1114.

Records and reports of traffic convictions, Title 61, ch. 11.

Part 7

Probation Officers

Part Cross-References

Probation, parole, and clemency, Title 46, ch. 23.

Cases of juveniles excluded, 46-23-102.

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

Cross-References

Youth Court committee, 41-5-105.

Youth Court Judge, 41-5-201.

Powers of Department of Institutions, 46-23-1002.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

(3) Each person appointed as a chief probation officer or probation officer under this section or as a deputy probation officer under 41-5-705 must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987.

Cross-References

Qualifications of probation and parole officers, 46-23-1003.

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

Cross-References

Preliminary investigation and disposition, 41-5-301.

Dispositional hearing, 41-5-522.

Consent decree with petition, 41-5-524.

Supervision on probation, 46-23-1011.

Arrest when violations of parole alleged, 46-23-1012.

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court, depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. In addition to such salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1 of that year an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 of each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except where such officer is appointed for one county, such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985.

Cross-References
District Court budget, 7-6-2351.
Youth Court Judge, 41-5-201.

41-5-705. Deputy probation officers — salary. (1) The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer excluding longevity payments provided in 41-5-704.

(2) In addition to such salary, each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) If a deputy probation officer is promoted to chief probation officer, his salary may not be decreased by the appointment. He shall retain all longevity allowances earned during his service as a deputy.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983.

Cross-References
District Court budget, 7-6-2351.
Youth Court Judge, 41-5-201.

Part 8

Custodial Care

41-5-801. Renumbered 41-3-1121. Sec. 31, Ch. 465, L. 1983.

41-5-802. Shelter care and detention facilities. (1) The county commissioners in each county shall provide for the availability of detention facilities for youths.

(2) (a) The county commissioners may maintain, by purchase, lease, or otherwise, a detention facility, which may not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths may be detained until final disposition.

(b) The county commissioners may appoint necessary personnel who have charge of the facility and of the youths detained therein.

(c) The compensation of the personnel must be fixed by the county commissioners, and the compensation and the maintenance of the facility must be paid out of the county treasury. These funds may be supplemented by state appropriation and federal funds.

(d) The county commissioners shall provide for inspection of any county detention facility every 3 months. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youths, and personnel training.

(e) The judge of the youth court for the county shall inspect any detention facility at least once a year.

(3) The county commissioners may contract with the department or public or private agencies to purchase detention services.

(4) (a) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(b) The facility must be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) The facility must be separate and apart from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of the facility.

(e) The facility must be furnished in a comfortable manner and be as nearly as possible like a family home.

(f) The facility may be operated in conjunction with a detention facility.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (1) relating to County Commissioners' responsibility to provide youth detention facilities; in (2)(a), at beginning, deleted "In all counties", substituted "maintain" for "provide", before "detention facility" deleted "place to be known as the youth", after "delinquent youths" deleted "and youths in need of supervision", and at end deleted "which place shall be maintained by the county as in other like cases"; in (2)(b), after "appoint", substituted "necessary personnel who have charge of the facility" for "such personnel as required, who shall have charge of said facility"; in (2)(c) substituted "maintenance" for "maintaining"; in (2)(e), before "youth court", deleted "district"; inserted (3) relating to County Commissioners' authority to contract for detention services; in (4)(a), before "a shelter care facility", deleted "a place to be known as"; in (4)(f), before "detention facility", deleted "youth"; and made minor changes in phraseology.

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

Youth Court Judge, 41-5-201.

Detention and shelter care of youth, 41-5-305.

Place of shelter care or detention, 41-5-306.

41-5-803. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

41-5-804. Renumbered 41-3-1105. Sec. 31, Ch. 465, L. 1983.

41-5-805. Combined with 41-3-405, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-5-806. Combined with 41-3-407, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-5-807. Renumbered 41-3-1115. Sec. 31, Ch. 465, L. 1983.

41-5-808. Detention facility for more than one county or city. (1) To satisfy the requirements of 41-5-802(1), a detention facility may be established and maintained through cooperation or by cooperative agreement of more than one county or city.

(2) Each detention facility must be licensed by the department of family services.

(3) The county determined by the court as the residence of the youth is responsible for the cost of the detention of the youth, including medical expenses incurred during detention.

(4) Counties receiving detention services must be billed monthly for services provided during the preceding month and may be refused services if bills are not paid within 60 days of receipt of a statement.

History: En. Sec. 4, Ch. 475, L. 1987; amd. Sec. 58, Ch. 83, L. 1989; amd. Sec. 9, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 83 in (2) substituted "department of family services" for "department of institutions".

Chapter 434 at beginning of (1), before "detention facility", substituted "To satisfy the requirements of 41-5-802(1), a" for "A regional"; and in (2), before "detention facility", deleted "regional" and after "department" deleted "of institutions".

41-5-809. Rules. The department shall adopt rules governing the:

(1) licensing procedures for regional and county detention facilities; and

(2) procedures for distributing funds for detention facilities and services as provided in 41-5-315 and 41-5-316.

History: En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause substituted "The department shall adopt rules" for "The department of family services shall make rules"; and inserted (2) relating to procedures for distributing funds for detention facilities and services.

Part 9

District Youth Guidance Homes (Repealed. Sec. 32, Ch. 465, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

41-5-901. En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.

41-5-902. En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.

41-5-903. En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.

41-5-904 through 41-5-910 reserved.

41-5-911. En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

41-5-922. En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1

Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide

their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged

to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which

he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after

a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or

between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Article XVI. Rendition

(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the

juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed.

History: **En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001; amd. Sec. 1, Ch. 436, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted Article XVI concerning rendition.

Cross-References

Right to counsel, 41-5-511.

Appointment of guardian ad litem, 41-5-512.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Probation revocation — disposition, 41-5-533.

Circumstances in which a peace officer may make an arrest, 46-6-401.

Uniform Criminal Extradition Act, Title 46, ch. 30.

Department to supervise importation and exportation of children, 53-4-114.

Commitment expenses — arrangement for transportation, 53-30-210.

Apprehension and return of child leaving juvenile facility without permission, 53-30-214.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 53-30-229.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: **En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.**

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

Powers and duties of Governor, 2-15-201.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: **En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.**

Cross-References

Powers and duties of Department of Institutions, 53-1-203.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: **En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.**

Cross-References

Authorization for disbursements — submission of claim to Department of Administration, 17-8-201.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.

Cross-References

Uniform Criminal Extradition Act, Title 46, ch. 30.

TITLES 42 AND 43

RESERVED

TITLE 44

LAW ENFORCEMENT

Ch.
1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
Chapters 6 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.
13. Special Law Enforcement Assistance Funding.

CHAPTER 1

HIGHWAY PATROL

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44-1-1004. Authority concerning livestock or livestock products in transit.
44-1-1005. Motor carriers safety — enforcement — violations.

Part 11 — Procedure for Arrests

44-1-1101. Duty of patrol officer upon making an arrest.
44-1-1102. Procedure when patrol officer accepts bail.
44-1-1103. Check in lieu of cash.

Chapter Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Local government law enforcement, Title 7, ch. 32.

Definition of peace officer, 45-2-101.

Obstructing a peace officer, 45-7-302.

Highway safety, Title 61, ch. 2.

Qualification as driver examiners, 61-5-101.

Part 1

General Provisions

Part Cross-References
Department of Justice to administer law and make rules, 61-6-105.

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the department of justice.
History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101; amd. Sec. 1, Ch. 503, L. 1985.

44-1-102. General duties of department of justice. The department of justice shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.
History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Department of Justice to administer laws and make rules, 61-6-105.

44-1-103. Authority to make rules. The department of justice may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.
History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Department of Justice to administer laws and make rules, 61-6-105.

44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.
History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

44-1-105. Department of justice to furnish equipment. The department of justice shall furnish patrol officers with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The department shall furnish all patrol officers with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.
History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In two places changed "patrolmen" to "patrol officers".

Cross-References
Applicability of motor pool provisions, 2-17-411.

44-1-106. Authority of department of justice to dispose of equipment. The department of justice shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Disposal of surplus property, 18-4-221 through 18-4-226, 18-4-231 through 18-4-234; Title 18, ch. 6.

Part 2

Highway Patrol Chief

Part Cross-References

Chief of patrol defined, 61-1-302.

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Cross-References

State Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3

Powers and Duties of Chief Relating to Patrol Officers

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrol officers, subject to the approval of the attorney general.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: Changed "patrolmen" to "patrol officers".

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In (2) changed "patrolmen" to "patrol officers"; and in (6) changed "patrolman" to "patrol officer".

Cross-References

State property purchases, Title 18, ch. 1, 4, and 5.

Authority of Department of Justice to suspend, demote, or reprimand, 44-1-701.

Chief as Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

Part 4

Appointment of Patrol Officers

44-1-401. Qualifications of patrol officers. Patrol officers shall possess the following qualifications:

(1) sound and active physical and mental condition;

(2) good moral character;

(3) residency in Montana for at least 1 year immediately prior to appointment;

(4) having passed a satisfactory test in the operation of automobiles;

(5) citizenship in the United States and state of Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: At beginning changed "Patrolmen" to "Patrol officers".

Cross-References

Definition of highway patrol officer, 61-1-305.

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrol officers by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrol officers, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "patrolmen" to "patrol officers".

44-1-403. Equal number of appointments from each highway district. Replacements and additions to the highway patrol force shall be chosen in equal numbers from the five highway districts. However, if sufficient qualified applications are not received from any one district, the department of justice may, in its discretion, substitute other qualified applicants from any other districts.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 102, Ch. 370, L. 1987.

Cross-References

Highway districts, 60-3-203.

44-1-404. Status of replacements for patrol officers who enter the armed forces. Patrol officers filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrol officers shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed references to patrolmen to references to patrol officers.

Cross-References

Leave of absence of public employee attending training camp, 10-1-604.

Reemployment of public employee upon completion of service, 10-2-221.

Part 5

Salaries and Expenses

Part Cross-References

Highway Patrol Officers' Retirement System, Title 19, ch. 6.

44-1-501. Payment of expenses. All expenses of the highway patrol shall be paid out of the highway department's account in the state special revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 20, Sp. L. June 1986.

Cross-References

Highway funds — state funds, Title 60, ch. 3, part 2.

44-1-502. Repealed. Sec. 2, Ch. 363, L. 1987.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrol officer is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrol officer.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "patrolman" to "patrol officer".

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: En Sec. 1, Ch. 317, L. 1979.

Cross-References

Workers' compensation, Title 39, ch. 71.

Reimbursement for costs of law enforcement assistance, 44-11-202.

Crime victims reparations, Title 53, ch. 9, part 1.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion

of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: **En Sec. 2, Ch. 317, L. 1979.**

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: **En Sec. 3, Ch. 317, L. 1979.**

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: **En Sec. 4, Ch. 317, L. 1979.**

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: **En Sec. 5, Ch. 317, L. 1979.**

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: **En Sec. 6, Ch. 317, L. 1979.**

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: **En Sec. 7, Ch. 317, L. 1979.**

Cross-References
Recovery against governmental entity, 2-9-305.

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrol officers' retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In two places in (3) changed "patrolmen's" to "patrol officers'".

Cross-References
Public Employees' Retirement System, Title 19, ch. 3.

Part 6

Probationary Status and Tenure

Part Cross-References
Duties of Chief of Highway Patrol Bureau, 44-1-303.

44-1-601. Probationary training and service — patrol officers. A new patrol officer shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrol officer will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In two places changed "patrolman" to "patrol officer".

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrol officer, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: Changed "patrolman" to "patrol officer".

Cross-References

Duties of Department of Justice, 44-1-102.

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the department of justice governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Part 7

Disciplinary Action — Preliminary Procedure

Part Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Duties of Department of Justice, 44-1-102.

Cause for suspension, demotion, or discharge, 44-1-612.

Withholding officer's salary for failure to provide information, 44-2-205.

44-1-701. Authority of department of justice to suspend, demote, or reprimand. When the department of justice has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge or his conduct has warranted reprimanding, it may suspend, demote, or reprimand the member.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Chief of Highway Patrol generally, 44-1-303.

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c); amd. Sec. 1, Ch. 503, L. 1985.

44-1-703. When charges dismissed. When charges are filed and the department of justice believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e); amd. Sec. 1, Ch. 503, L. 1985.

44-1-704. When department of justice to order hearing. When charges are filed and the department of justice believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d); amd. Sec. 1, Ch. 503, L. 1985.

44-1-705. Suspension pending hearing and decision. If the department of justice orders a hearing, the chief may suspend such patrol officer pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L.

1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: Changed "patrolman" to "patrol officer".

Part 8

Disciplinary Action Hearing and Decision

Part Cross-References
Duties of Department of Justice, 44-1-102.
Cause for suspension, demotion, or discharge, 44-1-612.

44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrol officer, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrol officer is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrol officer is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrol officer is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: **En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.**

Compiler's Comments
1989 Amendment: In four places changed "patrolman" to "patrol officer".

44-1-802. Authority of department of justice — conduct of hearing. (1) The department of justice shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The department shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: **En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b); amd. Sec. 1, Ch. 503, L. 1985.**

44-1-803. Rights of accused. The accused patrol officer shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel at such hearing.

History: **En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109,**

L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: Changed "patrolman" to "patrol officer".

44-1-804. Rendering and filing of decision. The department of justice shall, within 15 days after such hearing, render its decision in writing and file same in its office, with the chief, and with the patrol officer accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: Changed "patrolman" to "patrol officer".

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrol officer are not true, the department shall reinstate the accused patrol officer to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In two places changed "patrolman" to "patrol officer".

Cross-References
Reinstatement and backpay upon reversal or modification, 44-1-903.

44-1-806. Disciplinary action. If after a hearing the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: Changed "patrolman" to "patrol officer".

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109,

L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Cross-References
Reinstatement and backpay upon reversal or modification, 44-1-903.

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) Any patrol officer who is suspended, demoted, or discharged has a right of appeal to the district court of Lewis and Clark County.

(2) The appeal must be made within 10 days after the decision or determination of the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In (1) changed "patrolman" to "patrol officer".

Cross-References
Judicial review of contested cases, Title 2, ch. 4, part 7.

44-1-902. Action by court. The district court shall review such decision or determination in a summary manner and render its decision upon such appeal within 90 days from the filing of such appeal in said court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c).

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified by the district court, the accused patrol officer must be reinstated in his position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments
1989 Amendment: In two places changed "patrolman" to "patrol officer".

Cross-References
Reinstatement and backpay upon exoneration, 44-1-805.

Part 10

Jurisdiction of Patrol Officers

Part Cross-References
Enforcement of provisions respecting use of snowmobiles, 23-2-641.

Enforcement of motor vehicle statutes, 61-3-602.

Motor vehicle accidents and accident reports, Title 61, ch. 7.
Traffic regulation, Title 61, ch. 8.
Obedience to highway patrol officer, 61-9-105.
Records kept by Department of Justice, 61-11-102.
Patrol officer acting as firewarden, 77-5-104.

44-1-1001. Offenses for which patrol officers may make arrests. (1) The highway patrol chief and all patrol officers may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrol officer;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:
(a) deliberate homicide;
(b) assault with a deadly weapon;
(c) arson;
(d) criminal mischief;
(e) burglary;
(f) theft;
(g) kidnapping;
(h) illegal transportation of narcotics; or
(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In (1) changed "patrolmen" to "patrol officers"; and in (1)(a) changed "patrolman" to "patrol officer".

Cross-References

Deliberate homicide, 45-5-102.
Assault, 45-5-201.
Aggravated assault, 45-5-202.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Criminal mischief, 45-6-101.
Negligent arson, 45-6-102.
Arson, 45-6-103.
Burglary, 45-6-204.
Theft, 45-6-301.
Criminal sale of dangerous drugs, 45-9-101.
Written reports of highway accidents, 61-7-109.

44-1-1002. No authority in labor disputes. Such highway patrol officers have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: Changed "patrolmen" to "patrol officers".

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrol officers are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: Changed "Patrolmen" to "Patrol officers".

Cross-References

Regulations governing arrest authorized, 7-32-4301.

Warrants generally, Title 46, ch. 6, part 2.

Arrest without warrant generally, Title 46, ch. 30, part 3.

Highways defined, 61-1-201, 61-1-202.

Authority of Department of Justice to cancel licenses, 61-5-201.

Reports of accidents on highways, 61-7-109.

"Ways of this state open to the public" — definition, 61-8-101.

Motor vehicle defined, 69-12-101.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrol officers may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrol officers have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3); amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed references to patrolmen to references to patrol officers.

Cross-References

Theft, 45-6-301.

Duties of stock inspectors and detectives concerning livestock or livestock products in transit, 81-1-202.

44-1-1005. Motor carriers safety — enforcement — violations. (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply. However, standards relating to drivers, other

than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as provided for by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of chapters 5 and 9 of Title 61 and any standards adopted pursuant to subsections (1) and (2) of this section. Each employee so designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of such vehicles.

(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979; amd. Sec. 1, Ch. 226, L. 1981; amd. Sec. 1, Ch. 394, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 686, L. 1985; amd. Sec. 103, Ch. 370, L. 1987; amd. Sec. 1, Ch. 386, L. 1987.

Cross-References

Vehicle equipment, Title 61, ch. 9.

Applicability of Title 61, chapter 9, 61-9-109.

Performance ability of brakes, 61-9-312.

Inspections by officers of Department of Justice, 61-9-501.

Owners and drivers to comply with inspection laws, 61-9-503.

Joint enforcement of motor carrier safety standards by Highway Patrol, Department of Highways, 61-10-141.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Display of permit, 61-10-142.

Confiscation — action by Commission, 61-10-143.

Motor carriers, Title 69, ch. 12.

Part 11

Procedure for Arrests

Part Cross-References

Arrest, Title 46, ch. 6.

Circumstances in which a peace officer may arrest, 46-6-401.

Bail, Title 46, ch. 9.

Obedience to highway patrol officer, 61-9-105.

44-1-1101. Duty of patrol officer upon making an arrest. Upon making an arrest, a patrol officer shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: At beginning changed "patrolman" to "patrol officer".

Cross-References

Regulations governing arrest authorized, 7-32-4301.

Initial appearance of arrested person, Title 46, ch. 7.

44-1-1102. Procedure when patrol officer accepts bail. If the patrol officer accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In three places changed "patrolman" to "patrol officer".

Cross-References

Bail schedule for minor offenses — acceptance by peace officer, 46-9-302.

Acceptance of bail by peace officer, 46-9-302, 46-9-303.

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrol officers or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrol officer or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1; amd. Sec. 1, Ch. 217, L. 1989.

Compiler's Comments

1989 Amendment: In (1) changed "patrolmen" to "patrol officers"; and in (2) changed "patrolman" to "patrol officer".

Cross-References

Issuing bad checks, 45-6-316.

Furnishing bail, Title 46, ch. 9, part 4.

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Criminal Investigation

44-2-101. Repealed.
44-2-102. Repealed.
44-2-103. Repealed.
44-2-104 through 44-2-110 reserved.
44-2-111. Definition of "agent".
44-2-112. Appointment of agents and assisting personnel.
44-2-113. Qualifications of agents.
44-2-114. Personnel covered by PERS.
44-2-115. Powers and duties of agents.
44-2-116. Cooperation of state agencies.

Part 2 — State System of Criminal Identification

44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed.
44-2-204. Repealed.
44-2-205. Withholding of salary of officer who fails to provide information.
44-2-206. Cooperation with FBI and other states.

Part 3 — Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
44-2-303. Federal cost sharing.
44-2-304. Report by attorney general.
44-2-305 through 44-2-310 reserved.
44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of moneys — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 4 — Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records.
44-2-402. Dental examination — records — report.

Part 5 — Missing Children

44-2-501. Short title.
44-2-502. Definitions.
44-2-503. Missing children information program.
44-2-504. Reports to missing children information program.
44-2-505. Duties of law enforcement authority.
44-2-506. List of missing Montana school children.
44-2-507. Notice to parents of children absent from school.
44-2-508 through 44-2-510 reserved.
44-2-511. School enrollment procedures to aid identification of missing children.

Chapter Cross-References
Statewide emergency telephone 9-1-1 system, Title 10, ch. 4.
Private investigators and patrol officers, Title 37, ch. 60.
Automatic telephone alarm systems, 37-60-408.

Part 1

Criminal Investigation

Part Cross-References
Investigative procedures, Title 46, ch. 4.

44-2-101. Repealed. Sec. 14, Ch. 503, L. 1985.
History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

44-2-102. Repealed. Sec. 14, Ch. 503, L. 1985.
History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 82-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.
History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971; R.C.M. 1947, 82-417.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed to conduct criminal investigations and perform related duties within the attorney general's office.
History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 82-415; amd. Sec. 5, Ch. 503, L. 1985.

Cross-References
Definition of agent, 28-10-101.

44-2-112. Appointment of agents and assisting personnel. The attorney general shall appoint agents and other necessary assisting personnel and fix their compensation.
History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent shall be a person qualified by experience, training, and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.
History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3).

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.
History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.

Cross-References
Public Employees' Retirement System, Title 19, ch. 3.

44-2-115. Powers and duties of agents. An agent shall:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist any law enforcement school held in the state for law enforcement officers when requested;

(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979.

Cross-References

Peace officer defined, 1-1-207, 45-2-101.

Law Enforcement Academy, Title 44, ch. 17.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part).

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 34, Ch. 199, L. 1965; R.C.M. 1947, 80-2003.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.

History: En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.

Cross-References

Discipline of highway patrol members, Title 44, ch. 1, parts 7 through 9.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.

Part 3

Teletypewriter Communications System

Part Cross-References

Criminal justice information, Title 44, ch. 5.

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).

Cross-References

Duties of Attorney General, 2-15-501.

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.

44-2-304. Report by attorney general. The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. He shall submit such report to the appropriations committee of every legislature at the time funds are requested for the administration of this part.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906.

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.

44-2-314. Use of moneys — records. The state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.**

Part 4

Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police or sheriff's department or other law enforcement authority must be given a form, supplied by the department of justice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form should be signed by a relative of the missing person and taken to the dentist of the missing person, who must release the dental records or copies thereof to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies thereof obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that he has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.

History: **En. Sec. 1, Ch. 389, L. 1983.**

44-2-402. Dental examination — records — report. (1) If the coroner cannot identify a body, he or the state medical examiner shall have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner must send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare such records with dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and must submit any findings to the coroner or state medical examiner.

History: En. Sec. 2, Ch. 389, L. 1983.

Part 5

Missing Children

44-2-501. Short title. This part may be cited as the "Missing Children Act of 1985".

History: En. Sec. 1, Ch. 559, L. 1985.

44-2-502. Definitions. As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

History: En. Sec. 2, Ch. 559, L. 1985.

44-2-503. Missing children information program. (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

History: En. Sec. 3, Ch. 559, L. 1985.

44-2-504. Reports to missing children information program. (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

History: En. Sec. 4, Ch. 559, L. 1985.

44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

History: En. Sec. 5, Ch. 559, L. 1985.

44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

History: En. Sec. 6, Ch. 559, L. 1985.

44-2-507. Notice to parents of children absent from school. The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

History: En. Sec. 7, Ch. 559, L. 1985.

Cross-References

School attendance, Title 20, ch. 5, part 1.

44-2-508 through 44-2-510 reserved.

44-2-511. School enrollment procedures to aid identification of missing children. (1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

History: En. Sec. 1, Ch. 407, L. 1987.

Cross-References

Compulsory enrollment and excuses, 20-5-102.

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

Part 1 — General Provisions
Forensic Science

44-3-101. Short title.
44-3-102. Purpose.
44-3-103. Repealed.
44-3-104. Functions of department.
44-3-105. Authority to accept grants.
44-3-106. Power of attorney general to employ personnel.

Part 2 — Medical Examiners

44-3-201. State medical examiner.
44-3-202. Repealed.
44-3-203. Associate medical examiners — qualifications.
44-3-204. Associate medical examiners — compensation.
44-3-205 through 44-3-210 reserved.
44-3-211. Duties of state medical examiner.
44-3-212. Repealed.
44-3-213. Report to county attorney.
44-3-214. Records.

Part 3 — Laboratory of Criminalistics

44-3-301. Laboratory of criminalistics.
44-3-302. Fees for laboratory services.
44-3-303. Duties of laboratory director.
44-3-304. Repealed.

Part 4 — Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy.
44-3-402. Repealed.
44-3-403. Burial of corpse.
44-3-404. Criminal penalty.

Chapter Cross-References

Office of County Coroner generally, Title 7, ch. 4, part 29.

Investigative procedures, Title 46, ch. 4.

Part 1

General Provisions
Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.

44-3-102. Purpose. The purpose of this chapter is to authorize the attorney general to provide the personnel, facilities, and procedures to:

(1) determine the cause of certain types of deaths by such investigation and examination as are in the public interest;

(2) analyze specimens for law enforcement officers; and

(3) provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428; amd. Sec. 1, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause inserted "authorize the attorney general to"; and made minor changes in phraseology and form. Amendment effective May 18, 1989.

44-3-103. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).

44-3-104. Functions of department. The forensics functions of the department of justice include operation of a division of forensic sciences.

History: En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430; amd. Sec. 6, Ch. 503, L. 1985; amd. Sec. 2, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "operation of a division of forensic sciences" for "operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology". Amendment effective May 18, 1989.

44-3-105. Authority to accept grants. The department of justice is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431; amd. Sec. 7, Ch. 503, L. 1985.

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ personnel necessary to perform the functions authorized under this chapter.

History: En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part); amd. Sec. 8, Ch. 503, L. 1985; amd. Sec. 3, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "employ personnel necessary to perform the functions authorized under this chapter" for "employ such personnel as may be necessary to perform the functions of this chapter". Amendment effective May 18, 1989.

Part 2

Medical Examiners

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Presumption person is dead, alive, or missing, 26-1-602, 26-1-622, 26-1-623.

Investigative criminal procedures, Title 46, ch. 4.

Cadavers and autopsies, Title 50, ch. 21.

Duty of medical examiner to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

44-3-201. State medical examiner. A state medical examiner must be appointed by the attorney general. The state medical examiner must be a physician licensed to practice medicine in Montana.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part); amd. Sec. 9, Ch. 503, L. 1985; amd. Sec. 4, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence, after "attorney general", deleted "to administer department functions assigned by 44-3-104"; and in second sentence, after "state medical examiner", substituted "must be a physician licensed to practice medicine in Montana" for "may perform such other duties as may be assigned by the attorney general. The state medical examiner must be a forensic pathologist qualified and certified by the American board of pathology." Amendment effective May 18, 1989.

44-3-202. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing associate medical examiners; and

(6) performing autopsies as requested.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4); amd. Sec. 5, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (5) relating to appointment of associate medical examiners; and inserted (6) relating to performance of autopsies. Amendment effective May 18, 1989.

Cross-References

Duties of County Coroner, 7-4-2911.

Expert testimony, Rules 702 through 705, Montana Rules of Evidence (see Title 26, ch. 10).

Coroner's report of traffic accident deaths, 61-7-112.

44-3-212. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.

Cross-References

Coroner's report to County Attorney, 46-4-103.

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.

Part 3

Laboratory of Criminalistics

Part Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

44-3-301. Laboratory of criminalistics. (1) There is a laboratory of criminalistics within the department of justice. The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2); amd. Sec. 6, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: In (1) inserted first sentence relating to a laboratory of criminalistics within the Department of Justice. Amendment effective May 18, 1989.

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the state special revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3); amd. Sec. 1, Ch. 277, L. 1983.

44-3-303. Duties of laboratory director. There is a director of the laboratory of criminalistics. The laboratory director shall:

(1) be responsible for supervision and direction of the laboratory;

(2) assist the department in the appointment of laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the department.

History: En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439; amd. Sec. 10, Ch. 503, L. 1985; amd. Sec. 7, Ch. 689, L. 1989.

Compiler's Comments

1989 Amendment: Inserted first sentence relating to the director of the laboratory of criminalistics; in (1), after "be responsible", deleted "to the state medical examiner"; and in (2), before "laboratory personnel", substituted "assist the department in the appointment of" for "appoint". Amendment effective May 18, 1989.

44-3-304. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

Part 4

Provisions Relating to Corpses

Part Cross-References

Investigation of death — autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21.

Determination of death, Title 50, ch. 22.

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441; amd. Sec. 1, Ch. 492, L. 1985.

Cross-References

Liability of mortuary or physician, 46-4-104.

44-3-402. Repealed. Sec. 2, Ch. 408, L. 1983. (See 7-4-2917.)

History: En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.

44-3-403. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

History: En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979.

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

44-4-101. Position established.
44-4-102. Appointment.
44-4-103. Functions.
44-4-104 through 44-4-110 reserved.
44-4-111. Request for special counsel services.
44-4-112. County payment for special counsel services.

Part 2 — Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations.
44-4-202. Authority of attorney general to adopt rules.
44-4-203. Registration records.
44-4-204. Applications for confidential plates and registrations.
44-4-205. Use of confidential plates and registrations.
44-4-206. Revocation.

Part 3 — Board of Crime Control

44-4-301. Functions.
44-4-302. Definitions.

Parts 4 through 8 reserved

Part 9 — Railroad Corporation Special Peace Officers

44-4-901. Attorney general — appointment of special peace officers.
44-4-902. Application for appointment.
44-4-903. Limitations on special peace officer.
44-4-904. Responsibility of corporation.

Chapter Cross-References

Duty of Attorney General with regard to crime victims, 46-24-103.

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established. There is created within the department of justice the position of training coordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979.

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys, city attorneys, and other law enforcement personnel. The training coordinator may require payment by city attorneys of a fee commensurate with the cost of the training.

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; and

(6) as provided in 44-4-111, acting as special counsel.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979; amd. Sec. 1, Ch. 7, L. 1983; amd. Sec. 1, Ch. 291, L. 1983.

44-4-104 through 44-4-110 reserved.

44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

History: En. Sec. 2, Ch. 7, L. 1983.

Cross-References

Affinity defined, 1-1-219.

Computing degrees of kindred, Title 72, ch. 11, part 1.

44-4-112. County payment for special counsel services. Whenever the training coordinator acts as special counsel as provided in 44-4-111, the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit these funds into the state general fund.

History: En. Sec. 3, Ch. 7, L. 1983.

Part 2

Confidential License Plates and Registrations

Part Cross-References

Registration of motor vehicles, Title 61, ch. 3.

Records of Department of Justice open to public inspection, 61-3-101.

44-4-201. Authorization to issue confidential plates and registrations. (1) The attorney general may issue confidential license plates and certificates of registration to bona fide law enforcement agencies, except the highway patrol, within the state of Montana.

(2) The attorney general may issue confidential license plates and certificates of registration for purposes other than law enforcement.

(3) Confidential license plates and certificates of registration are exempt from all requirements for public disclosure.

(4) The issuance of confidential registrations is subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part); amd. Sec. 1, Ch. 653, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "issue", inserted "confidential license plates and certificates of registration"; inserted (2) regarding issuance of confidential license plates and certificates of registration for purposes other than law enforcement; at beginning of (3) inserted "Confidential"; and made minor changes in phraseology and form. Amendment effective May 11, 1989.

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, parts 1 through 3.

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations or for purposes as authorized in 44-4-201(2).

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3); amd. Sec. 2, Ch. 653, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) inserted "or for purposes as authorized in 44-4-201(2)". Amendment effective May 11, 1989.

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).**

Part 3

Board of Crime Control

Part Cross-References

Creation and composition, 2-15-2006.

Training program required for reserve officers, 7-32-214.

Employment standards of Board, 7-32-303.

Qualifications of policemen, 7-32-4112.

44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall have the authority to establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, and detention center administrators.

(3) The board shall have the authority to require basic training for officers, establish minimum standards for equipment and procedures and for advanced in-service training for officers, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard for good cause shown.

History: **En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4); amd. Sec. 1, Ch. 345, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted second sentence of (1) that read: "The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature"; at end of (2) substituted "as defined in 7-32-303, detention officers, and detention center administrators" for "whose primary responsibility as authorized by law includes either the prevention and detention of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions"; at beginning of (3) inserted "The board shall have the authority to" and near middle, after "enforcement", inserted "and detention officer"; and made minor changes in phraseology.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

44-4-302. Definitions. As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

History: **En. Sec. 2, Ch. 345, L. 1989.**

Parts 4 through 8 reserved

Part 9

Railroad Corporation Special Peace Officers

Part Cross-References

Attorney General — general duties, 2-15-501.

Railroad corporations, Title 69, ch. 14, part 5.

Railroad personnel, Title 69, ch. 14, part 10.

44-4-901. Attorney general — appointment of special peace officers. The attorney general may appoint special peace officers as provided in this part.

History: **En. Sec. 1, Ch. 552, L. 1987.**

44-4-902. Application for appointment. A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted under 44-4-301. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that he is acquainted with the person seeking appointment, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely entrusted with the powers and duties of a special peace officer.

History: **En. Sec. 2, Ch. 552, L. 1987.**

44-4-903. Limitations on special peace officer. A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

History: **En. Sec. 3, Ch. 552, L. 1987.**

44-4-904. Responsibility of corporation. The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of his actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees thereof harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state.

History: **En. Sec. 4, Ch. 552, L. 1987.**

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

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Part 1

General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: **En. Sec. 1, Ch. 525, L. 1979.**

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination.

History: **En. Sec. 2, Ch. 525, L. 1979; amd. Sec. 9, Ch. 145, L. 1985.**

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: **En. Sec. 3, Ch. 525, L. 1979.**

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: **En. Sec. 4, Ch. 525, L. 1979.**

Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: En. Sec. 23, Ch. 525, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: En. Sec. 24, Ch. 525, L. 1979.

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: En. Sec. 22, Ch. 525, L. 1979.

Cross-References

Knowingly and purposely defined, 1-1-204, 45-2-101.

Part 2

Collection and Processing

Part Cross-References

Public records generally, Title 2, ch. 6, part 1.

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

History: **En. Sec. 6, Ch. 525, L. 1979.**

Cross-References

Requiring fingerprints for alcoholic beverage license, 16-4-403.

Fingerprints and photographs of youths, 41-5-304.

Right not to be fingerprinted, 53-20-143, 53-21-143.

Rights concerning photographs, 53-20-144, 53-21-144.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: **En. Sec. 7, Ch. 525, L. 1979.**

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: **En. Sec. 8, Ch. 525, L. 1979.**

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: En. Sec. 9, Ch. 525, L. 1979.

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: **En. Sec. 19, Ch. 525, L. 1979.**

Cross-References

Dissemination of public criminal justice information, 44-5-301.

Dissemination of criminal history records, 44-5-302.

Dissemination of confidential criminal justice information, 44-5-303.

Dissemination of copied or inspected records, 44-5-305.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: **En. Sec. 20, Ch. 525, L. 1979.**

Cross-References

Torts by governmental entities generally, Title 2, ch. 9, parts 1 and 3.

Record preservation, 44-5-212.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: En. Sec. 10, Ch. 525, L. 1979.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the state bar for licensing purposes.

History: En. Sec. 11, Ch. 525, L. 1979; amd. Sec. 1, Ch. 15, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) concerning fingerprints of applicants for admission to State Bar.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979.

Cross-References

Inspection or transfer of criminal history records, 44-5-214.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: **En. Sec. 13, Ch. 525, L. 1979.**

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: **En. Sec. 21, Ch. 525, L. 1979.**

Part 4

System Security

Part Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: **En. Sec. 14, Ch. 525, L. 1979.**

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 15, Ch. 525, L. 1979.**

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: **En. Sec. 16, Ch. 525, L. 1979.**

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: **En. Sec. 17, Ch. 525, L. 1979.**

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the

employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 18, Ch. 525, L. 1979.**

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Official misconduct, 45-7-401.

Part 5

Criminal Intelligence Information Section

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

General duties of Attorney General, 2-15-501.

44-5-501. Creation of criminal intelligence information section — advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

History: **En. Sec. 1, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

44-5-502. Definitions. In this part the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in 44-5-501.

(2) "Section" means the criminal intelligence information section provided for in 44-5-501.

History: **En. Sec. 2, Ch. 145, L. 1985.**

44-5-503. Duties of section. The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by this part and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

History: **En. Sec. 3, Ch. 145, L. 1985.**

Cross-References

Teletypewriter communications system, Title 44, ch. 2, part 3.

Criminal justice information — collection and processing, Title 44, ch. 5, part 2.

44-5-504. Section standards and procedures. The attorney general, in conjunction with the department of justice and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with this part by the section and must include safeguards of individual privacy rights as provided in this chapter.

History: **En. Sec. 8, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

44-5-505. Section supervisor and personnel. (1) The attorney general shall designate a section supervisor.

(2) The department of justice may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

History: **En. Sec. 4, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

(a) municipal police departments;

(b) sheriff's departments; and

(c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.

History: **En. Sec. 6, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

Cross-References

Sheriff's department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Criminal investigation, Title 44, ch. 2, part 1.

44-5-507 through 44-5-510 reserved.

44-5-511. Functions of advisory council. The advisory council shall:

(1) recommend general policies for the operation of the section;

(2) recommend the approval or denial of an application from an eligible agency for participation in the section;

(3) recommend the suspension of a participant agency for due cause; and

(4) recommend, if appropriate, the reinstatement of a suspended participant agency.

History: **En. Sec. 5, Ch. 145, L. 1985.**

Cross-References

Creation of advisory councils, 2-15-122.

44-5-512 through 44-5-514 reserved.

44-5-515. Protection of individual privacy. The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

History: **En. Sec. 7, Ch. 145, L. 1985.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.
44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.

44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Chapter Cross-References

Training in victim assistance, 46-24-102.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers and other qualified individuals with a means of securing training in the field of law enforcement.

History: En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202; amd. Sec. 1, Ch. 40, L. 1989.

Compiler's Comments

1989 Amendment: After "Montana law enforcement officers" inserted "and other qualified individuals" and near end, before "training", deleted "additional". Amendment effective July 1, 1989.

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part); amd. Sec. 1, Ch. 431, L. 1985.

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among qualified applicants those officers and other individuals who are to attend the academy each year;

(3) determine the curriculum and methods of training for officers and other individuals attending the academy;

(4) select and hire staff as it considers necessary to implement this chapter;

(5) establish rules for the conduct of officers and other individuals enrolled at the academy;

(6) award appropriate certificates to officers and other individuals who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department considers necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206; amd. Sec. 2, Ch. 431, L. 1985; amd. Sec. 2, Ch. 40, L. 1989.

Compiler's Comments

1989 Amendment: In (2), (3), and (6), after "officers", inserted "and other individuals"; in (5), after "officers", inserted "and other individuals enrolled"; and made minor changes in phraseology. Amendment effective July 1, 1989.

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers and other individuals who meet the qualifications established by the department of justice shall be eligible to apply for admission to the Montana law enforcement academy.

History: En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204; amd. Sec. 3, Ch. 40, L. 1989.

Compiler's Comments

1989 Amendment: After "law enforcement officers" inserted "and other individuals who meet the qualifications established by the department of justice" and before "academy" substituted "the Montana law enforcement" for "this". Amendment effective July 1, 1989.

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.

CHAPTER 11

MUTUAL ASSISTANCE
RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 3 — Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title.
44-11-302. Purpose.
44-11-303. Definitions.
44-11-304. Authorization to enter agreement — general content — authority of peace officer.
44-11-305. Detailed content of agreement.
44-11-306. Right of state in actions involving agreements.
44-11-307. Agreement not to relieve agency of duties.
44-11-308. Limitation of powers.
44-11-309. Submission of agreement to attorney general.
44-11-310. Filing of agreement.
44-11-311. Authorization to appropriate funds for purpose of agreement.
44-11-312. Effect of other law.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while in the jurisdiction of the requesting officer or entity and while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity and is under the authority of the requesting officer or entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851; amd. Sec. 1, Ch. 22, L. 1985.

Cross-References

Technical assistance by County Attorney Training Coordinator to law enforcement official, 44-4-103.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.

Part 3

Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title. This part shall be known and may be cited as the "Interstate Law Enforcement Mutual Aid Act".

History: En. Sec. 1, Ch. 318, L. 1983.

44-11-302. Purpose. It is the purpose of this part to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to insure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors are in need of an increased law enforcement presence.

History: En. Sec. 2, Ch. 318, L. 1983.

44-11-303. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as the term is defined in 46-1-201.

History: En. Sec. 3, Ch. 318, L. 1983.

44-11-304. Authorization to enter agreement — general content — authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if he were a duly appointed and qualified peace officer of the law enforcement agency he is assisting.

History: En. Sec. 4, Ch. 318, L. 1983.

44-11-305. Detailed content of agreement. The agreement authorized by 44-11-304 must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for law enforcement personnel implementing the provisions of the agreement;

(9) the respective liability of each party to the agreement for the actions of law enforcement officers when acting under the provisions of the agreement;

(10) the minimum insurance required of each party to the agreement;

(11) the exact chain of command or delegation of authority to be followed by law enforcement officials acting under the provisions of the agreement;

(12) the precise enforcement authority that the peace officers of each party law enforcement agency may exercise; and

(13) any other necessary and proper matters.

History: **En. Sec. 5, Ch. 318, L. 1983.**

44-11-306. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state.

History: **En. Sec. 6, Ch. 318, L. 1983.**

44-11-307. Agreement not to relieve agency of duties. No agreement made under this part may relieve any law enforcement agency of this state of any duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: **En. Sec. 7, Ch. 318, L. 1983.**

44-11-308. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any law enforcement agency of this state to exercise any power that it is not otherwise authorized to exercise.

History: **En. Sec. 8, Ch. 318, L. 1983.**

44-11-309. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the party law enforcement agencies.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved by him.

History: **En. Sec. 9, Ch. 318, L. 1983.**

44-11-310. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: **En. Sec. 10, Ch. 318, L. 1983.**

44-11-311. Authorization to appropriate funds for purpose of agreement. Any law enforcement agency of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: **En. Sec. 11, Ch. 318, L. 1983.**

44-11-312. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: **En. Sec. 12, Ch. 318, L. 1983.**

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service.
44-12-202. Answer to allegations concerning use of property.
44-12-203. Presumption — procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Chapter Cross-References

Seizure, forfeiture, and sale of alcoholic beverages, 16-6-106, 16-6-107.

Dangerous drugs, Title 45, ch. 9.

Search and seizure, Title 46, ch. 5.

Health and safety — controlled substances, Title 50, ch. 32.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: **En. Sec. 1, Ch. 529, L. 1979.**

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with his actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana.

History: En. Sec. 2, Ch. 529, L. 1979; amd. Sec. 8, Ch. 481, L. 1981; amd. Sec. 1, Ch. 180, L. 1983; amd. Sec. 1, Ch. 476, L. 1987; amd. Sec. 1, Ch. 652, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1)(b) decreased amount of marijuana involved from 250 grams to 60 grams; in (1)(d), after "use in", deleted "unlawfully transporting or in" and after "facilitate the" substituted "commission of a violation of Title 45, chapter 9" for remainder of former (1)(d) that read: "transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant"; at beginning of (1)(h), before "personal", deleted "real or", near middle, after "from", deleted "sale of a controlled substance in", and at end inserted "that is punishable by more than 5 years in prison"; inserted (1)(i) relating to forfeiture of real property and interests therein; near end of (2)(d) decreased amount of marijuana involved from 250 grams to 60 grams; and made minor changes in phraseology and punctuation.

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the offices of his law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1.

History: En. Sec. 3, Ch. 529, L. 1979; amd. Sec. 9, Ch. 481, L. 1981; amd. Sec. 1, Ch. 489, L. 1989.

Compiler's Comments

1989 Amendment: In last sentence of (1) substituted "deliver a conveyance that he seizes to the offices of his law enforcement agency" for "deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made".

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: En. Sec. 4, Ch. 529, L. 1979.

Part 2

Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service. A peace officer or an officer of an agency that seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the department of justice.

History: **En. Sec. 5, Ch. 529, L. 1979; amd. Sec. 1, Ch. 563, L. 1985.**

Cross-References

Service of process, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

44-12-202. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: **En. Sec. 6, Ch. 529, L. 1979; amd. Sec. 2, Ch. 563, L. 1985.**

Cross-References

Service of process, answer, Rules 4 and 12, M.R.Civ.P. (see Title 25, ch. 20).

44-12-203. Presumption — procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102, except property listed in 44-12-102(1)(i).

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion must order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 60 days after the answer

is filed. Notice of the hearing shall be given in the manner provided for service of the petition and summons.

History: **En. Sec. 7, Ch. 529, L. 1979; amd. Sec. 2, Ch. 180, L. 1983; amd. Sec. 3, Ch. 563, L. 1985; amd. Sec. 2, Ch. 652, L. 1989.**

Compiler's Comments

1989 Amendment: At end of (1) inserted "except property listed in 44-12-102(1)(i)".

44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: **En. Sec. 8, Ch. 529, L. 1979; amd. Sec. 3, Ch. 180, L. 1983.**

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons.

History: En. Sec. 9, Ch. 529, L. 1979; amd. Sec. 4, Ch. 180, L. 1983; amd. Sec. 2, Ch. 476, L. 1987; amd. Sec. 2, Ch. 489, L. 1989.

Compiler's Comments

1989 Amendment: In (2)(a), in second sentence before "must be sold", inserted "if it is sold", after "public auction by" substituted "the law enforcement agency that seized the property" for "the sheriff of the county in which the seizure was made", before "may return" substituted "law enforcement agency" for "state", and inserted last sentence relating to prohibition against purchase of seized property by certain persons.

Cross-References

Property subject to execution, Title 25, ch. 13, part 5.

Property exempt from execution, Title 25, ch. 13, part 6.

Sale on execution, Title 25, ch. 13, part 7.

Validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Alienability of debtor's rights — judicial process, 30-9-311.

44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account, as appropriated by the legislature, only for purposes of enforcement of drug laws.

History: En. Sec. 10, Ch. 529, L. 1979; amd. Sec. 5, Ch. 180, L. 1983; amd. Sec. 3, Ch. 476, L. 1987.

Cross-References

Proceeds — secured party's rights on disposition of collateral, 30-9-306.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

CHAPTER 13

SPECIAL LAW ENFORCEMENT ASSISTANCE FUNDING

Part 1 — Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created.
44-13-102. Federal forfeitures deposited in account.
44-13-103. Limitations on use of special law enforcement assistance account.

Part 1

Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created. There is an account in the federal special revenue fund defined in 17-2-102 to be known as the special law enforcement assistance account.

History: En. Sec. 1, Ch. 625, L. 1985.

44-13-102. Federal forfeitures deposited in account. Property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101.

History: En. Sec. 2, Ch. 625, L. 1985.

44-13-103. Limitations on use of special law enforcement assistance account. (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

(3) The attorney general shall give the legislature, not later than 4 months after the end of each fiscal year, a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution.

History: En. Sec. 3, Ch. 625, L. 1985; amd. Sec. 1, Ch. 206, L. 1987.

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.
10. Model Drug Paraphernalia Act.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

Cross-References

Reasons for punishing offenders, Art. II, sec. 28, Mont. Const.

Criminal act and mental state, 45-2-103.

Criminal procedure purpose, 46-1-102.

Sentence and judgment, 46-18-101, 46-18-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

Cross-References

Other limitations as to applicability, 45-1-104.

Classification and limitations, 45-1-201 through 45-1-206.

Definitions and state of mind, 45-2-101 through 45-2-104.

Other factors affecting individual liability, 45-2-201 through 45-2-213.

Liability for acts committed by another, 45-2-301 through 45-2-312.

Justifiable use of force, 45-3-101 through 45-3-115.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Cross-References

Sentence, 46-18-201 through 46-18-203.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

Cross-References

Application to offenses committed before and after enactment, 45-1-103.

Time limitations, 45-1-205, 45-1-206.

Definitions of "felony" and "misdemeanor", 45-2-101.

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Burglary, 45-6-204.

Compounding a felony, 45-7-305.

When no penalty is specified, 46-18-211 through 46-18-213.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106; amd. Sec. 4, Ch. 485, L. 1981; amd. Sec. 1, Ch. 227, L. 1985; amd. Sec. 1, Ch. 294, L. 1989; amd. Sec. 1, Ch. 435, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 294 in (1)(b), after "after", substituted "the victim reaches the age of 18" for "the offense was committed" and after "less than" substituted "18 years" for "16 years". Amendment effective March 24, 1989.

Chapter 435 in (1)(a) substituted "deliberate, mitigated, or negligent homicide" for "criminal homicide". Amendment effective April 4, 1989.

Applicability: Section 3, Ch. 294, L. 1989, provided: "[This act] applies:

(1) retroactively, within the meaning of 1-2-109, to offenses that occurred before [the effective date of this act] and for which the statute of limitations has not expired on [the effective date of this act]; and

(2) to offenses occurring after [the effective date of this act]." Effective March 24, 1989.

Cross-References

Classification of offenses, 45-1-201.

Definitions of "felony" and "misdemeanor", 45-2-101.

Homicide, 45-5-102 through 45-5-104.

Theft and related offenses, 45-6-301 through 45-6-327.

Methods of commencing prosecution, Title 46, ch. 11, part 1.

Filing of information, 46-11-201 through 46-11-204.

Guardians of incapacitated persons, 72-5-301 through 72-5-325.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

Cross-References

Rules for determining residence, 1-1-215.

General time limitations, 45-1-205.

Definition of "offense", 45-2-101.

Filing of information, 46-11-201 through 46-11-204.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Part 1 — Definitions and State of Mind

45-2-101. General definitions.
45-2-102. Substitutes for negligence and knowledge.
45-2-103. General requirements of criminal act and mental state.
45-2-104. Absolute liability.

Part 2 — Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result.
45-2-202. Voluntary act.
45-2-203. Responsibility — intoxicated condition.
45-2-204 through 45-2-210 reserved.
45-2-211. Consent as a defense.
45-2-212. Compulsion.
45-2-213. Entrapment.

Part 3 — Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another.
45-2-302. When accountability exists.
45-2-303. Separate conviction of person accountable.
45-2-304 through 45-2-310 reserved.
45-2-311. Criminal responsibility of corporations.
45-2-312. Accountability for conduct of corporation.

Part 1

Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of

ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object

to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of

the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979; amd. Sec. 1, Ch. 485, L. 1981; amd. Sec. 15, Ch. 3, L. 1985.

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General requirements of criminal act and mental state, 45-2-103.

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Theft, 45-6-301.

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45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

45-2-103. General requirements of criminal act and mental state. (1) Except for deliberate homicide as defined in 45-5-102(1)(b) or an offense which involves absolute liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (33), (37), and (58) of 45-2-101.

(2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

(3) The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(4) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(6) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(7) If a person's reasonable belief is a defense under subsection (6), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(8) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979; amd. Sec. 5, Ch. 485, L. 1981; amd. Sec. 2, Ch. 610, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Absolute liability, 45-2-104.

Inference of mental state in deliberate homicide, 45-5-112.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104; amd. Sec. 6, Ch. 485, L. 1981; amd. Sec. 1, Ch. 350, L. 1987.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Voluntary act, 45-2-202.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

Cross-References

Definition of "conduct", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102; amd. Sec. 3, Ch. 610, L. 1987.

Cross-References

Definition of "act", 45-2-101.
Definition of "conduct", 45-2-101.
Definition of "involuntary act", 45-2-101.
Definition of "possession", 45-2-101.
Absolute liability, 45-2-104.

45-2-203. Responsibility — intoxicated condition. A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109; amd. Sec. 1, Ch. 251, L. 1987.

Cross-References

Definition of "intoxicating substance", 45-2-101.
Robbery, 45-5-401.
Mental competency of accused, Title 46, ch. 14.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.

Cross-References

Sexual crimes, Title 45, ch. 5, part 5.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.

Cross-References

Definition of "conduct", 45-2-101.

When accountability exists, 45-2-302.

Testimony of person legally accountable, 46-16-213.

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: **En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.**

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

Inchoate offenses, 45-4-101 through 45-4-103.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: **En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.**

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

When accountability exists, 45-2-302.

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104 or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: **En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112; amd. Sec. 2, Ch. 582, L. 1983; amd. Sec. 2, Ch. 365, L. 1985.**

Cross-References
Definition of "conduct", 45-2-101.
Accountability for conduct of corporation, 45-2-312.
Summons to a corporation, 46-6-304.

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.

Cross-References
Definition of "conduct", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.
45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

Part Cross-References
Right to use force, 49-1-103.

45-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

Cross-References
Definition of "forcible felony", 45-2-101.
Justifiable use of force, Title 45, ch. 3.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

Cross-References
Definitions of "forcible felony" and of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.

Cross-References
Definition of "conduct", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "enter or remain unlawfully", 45-6-201.
Criminal trespass to property, 45-6-203.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.

Cross-References
Definition of "forcible felony", 45-2-101, 45-3-101.
Use of force in defense of person, 45-3-102.
Use of force in defense of occupied structure, 45-3-103.
Definition of "enter or remain unlawfully", 45-6-201.
Criminal trespass to property, 45-6-203.
Arrest by a private person, 46-6-501 through 46-6-503.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Definition of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.

Cross-References

Definition of "correctional institution", 45-2-101.

Resisting arrest, 45-7-301.

Escape, 45-7-306.

Stop and frisk, 46-5-401, 46-5-402.

Method of arrest, 46-6-104.

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.

Cross-References

Homicide, 45-5-102 through 45-5-105.

Assault, 45-5-201 through 45-5-204.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.

Cross-References

Use of force in defense of person, 45-3-102.

Resisting arrest, 45-7-301.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-106.

45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109; amd. Sec. 3, Ch. 411, L. 1983.

Cross-References

Death penalty, 46-18-301 through 46-18-310.

Execution of death, 46-19-103.

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.

Cross-References

Defendant presumed innocent — reasonable doubt, 46-16-601.

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;

(b) has been convicted of a different offense;
(c) is not amenable to justice;
(d) has been acquitted; or
(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

Cross-References

Admissibility of statements of coconspirator, Rule 801(d)(2)(E), Montana Rules of Evidence (see Title 26, ch. 10).

Definition of "acts", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Liability for acts committed by or for another, 45-2-301 through 45-2-312.

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

45-5-101. Repealed.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.
45-5-106 through 45-5-110 reserved.
45-5-111. Extrajudicial confession — evidence of death.
45-5-112. Inference of mental state.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault — felony assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.
45-5-205. Negligent vehicular assault — penalty.

45-5-206. Domestic abuse.
45-5-207. Criminal endangerment — penalty.
45-5-208. Negligent endangerment — penalty.
45-5-209 through 45-5-220 reserved.
45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty.
45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.
45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
45-5-503. Sexual intercourse without consent.
45-5-504. Indecent exposure.
45-5-505. Deviate sexual conduct.
45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.
45-5-507. Incest.
45-5-508 through 45-5-510 reserved.
45-5-511. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

45-5-601. Prostitution.
45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
45-5-605 through 45-5-610 reserved.
45-5-611. Bigamy.
45-5-612. Marrying a bigamist.
45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.
45-5-614 through 45-5-620 reserved.
45-5-621. Nonsupport.
45-5-622. Endangering the welfare of children.
45-5-623. Unlawful transactions with children.
45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.
45-5-625. Sexual abuse of children.
45-5-626. Violation of protective order — misdemeanor.
45-5-627 through 45-5-630 reserved.
45-5-631. Visitation interference.
45-5-632. Aggravated visitation interference.
45-5-633. Defenses to visitation interference and aggravated visitation interference.

Part 1

Homicide

Part Cross-References

Family member of victim — reimbursement for mental health treatment, 53-9-128.

45-5-101. Repealed. Sec. 11, Ch. 610, L. 1987.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) he purposely or knowingly causes the death of another human being; or

(b) he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, he or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979; amd. Sec. 1, Ch. 322, L. 1987; amd. Sec. 4, Ch. 610, L. 1987.

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Burden of the state in homicide trial, 45-5-111, 45-5-112.

Kidnapping, 45-5-301 through 45-5-304.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Arson, 45-6-103.

Burglary, 45-6-204.

Escape, 45-7-306.

Limitation on deferred imposition of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Killing of peace officer — aggravating circumstances, 46-18-303.

Protection of premature infants born alive, 50-20-108.

45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 610, L. 1987.

Cross-References

Deliberate homicide, 45-5-102.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if he negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 610, L. 1987.

Cross-References

Classification of offenses, 45-1-201.

Definition of "negligently", 45-2-101.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

When accountability exists, 45-2-302.

45-5-106 through 45-5-110 reserved.

45-5-111. Extrajudicial confession — evidence of death. In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(1); redes. 45-5-111 by Code Commissioner, 1983.

45-5-112. Inference of mental state. In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(2); redes. 45-5-112 by Code Commissioner, 1983.

Cross-References

Inference of mental state generally, 45-2-103.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "weapon", 45-2-101.

45-5-202. Aggravated assault — felony assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981; amd. Sec. 1, Ch. 163, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "serious bodily injury", 45-2-101.

Definition of "weapon", 45-2-101.

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-401.

Written report when no arrest made in domestic violence situation, 46-6-421.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 268, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-5-205. Negligent vehicular assault — penalty. (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol or drugs, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 1, Ch. 93, L. 1985; amd. Sec. 1, Ch. 196, L. 1987.

45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of this section and 46-6-401, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(4) (a) A person convicted of domestic abuse for the first or second time shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court.

History: En. Sec. 1, Ch. 700, L. 1985; amd. Sec. 1, Ch. 480, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) requiring counseling for person convicted of domestic abuse for first or second time, stating with whom or in what type of program counseling must occur, and stating that counseling must be directed to violent conduct of convicted person; and inserted (5) providing that willful failure to obtain or pay for counseling is civil contempt of court.

Cross-References

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-401.

Written report when no arrest made in domestic violence situation, 46-6-421.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-422.

45-5-207. Criminal endangerment — penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 2, Ch. 196, L. 1987; amd. Sec. 1, Ch. 299, L. 1989.

Compiler's Comments

1989 Amendment: Inserted second sentence of (1) that read: "This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment."

45-5-208. Negligent endangerment — penalty. (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) A person convicted of the offense of negligent endangerment shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: **En. Sec. 3, Ch. 196, L. 1987.**

45-5-209 through 45-5-220 reserved.

45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty. (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, he purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

(a) causes bodily injury to another;

(b) causes reasonable apprehension of bodily injury in another; or

(c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without his or her permission.

(3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both.

History: **En. Secs. 1, 2, Ch. 570, L. 1989.**

45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222.

History: **En. Sec. 3, Ch. 570, L. 1989.**

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.

45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Limitation upon deferral or suspension of sentence, 46-18-201.

45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Unlawful restraint, 45-5-301.
Kidnapping, 45-5-302.
Limitation on deferral or suspension of sentence, 46-18-201.
Sentences for certain offenses committed in state prison, 46-18-220.

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so:

(a) he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, he takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) he is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 518, L. 1987.

Cross-References

Child custody determination and modification, 40-4-211 through 40-4-225.

Definition of "knowingly", 45-2-101.

Kidnapping, 45-5-302.

Aggravated kidnapping, 45-5-303.

Part 4

Robbery

45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "threat", 45-2-101.

Theft, 45-6-301.

Limitation on deferral or suspension of sentence, 46-18-201.

Part 5

Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.

Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-501. Definition. As used in 45-5-503 and 45-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501.

Cross-References

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "physically helpless", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Consent as a defense, 45-2-211.

Sexual intercourse without consent, 45-5-503.

Deviate sexual conduct, 45-5-505.

Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual abuse of children, 45-5-625.

Videotaped testimony of victim, 46-15-401.

45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(2)(c).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall

be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "sexual contact", 45-2-101.
Definition of "without consent", 45-5-501, 45-5-511.
Sexual abuse of children, 45-5-625.
Videotaped testimony of victim, 46-15-401.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985; amd. Sec. 1, Ch. 174, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) requiring that a person committing incest may be imprisoned up to 20 years and fined up to $50,000 if the victim is under age 16, the offender is 3 or more years older than the victim, or the offender inflicts bodily injury during incest; and in (5) inserted "or (4)".

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.
Victim less than 16 years old — extension of statute of limitations, 45-1-205.
Definition of "cohabit", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "sexual intercourse", 45-2-101.
Videotaped testimony of victim, 46-15-401.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife

regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

(4) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(5) If the defendant proposes for any purpose to offer evidence described in subsection (4)(a) or (4)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (4).

(6) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(7) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Videotaped testimony of victim, 46-15-401.

Part 6

Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

Cross-References
Definition of "house of prostitution", 45-2-101.
Definition of "inmate", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "solicit", 45-2-101.
Prostitution, 45-5-601.
Evidence in cases of promotion, 45-5-604.

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part); amd. Sec. 7, Ch. 198, L. 1981.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Prostitution, 45-5-601.
Promoting prostitution, 45-5-602.
Evidence in cases of promotion, 45-5-604.

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).

Cross-References

Definition of "house of prostitution", 45-2-101.

Prostitution, 45-5-601.

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.

Cross-References

Definition of "knowingly", 45-2-101.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.

Cross-References

Definition of "knowingly", 45-2-101.

Bigamy, 45-5-611.

45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.

45-5-614 through 45-5-620 reserved.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Mutual obligations of husband and wife, 40-2-101.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Liability of married person when abandoned by spouse, 40-2-104.

Child support, 40-4-204.

Enforcement of support, Title 40, ch. 5.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Definition of "knowingly", 45-2-101.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian; or

(ii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607; amd. Sec. 1, Ch. 405, L. 1987; amd. Sec. 3, Ch. 448, L. 1989.

Compiler's Comments

1989 Amendment: In (2), at beginning, inserted exception clause citing 16-6-305; and made minor change in grammar.

Cross-References

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "knowingly", 45-2-101.

45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978; amd. Sec. 4, Ch. 217, L. 1987; amd. Sec. 4, Ch. 448, L. 1989.

Compiler's Comments

1989 Amendment: In (1), at beginning, inserted exception clause citing 16-6-305; and made minor change in grammar.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order. (1) (a) A person under the age of 19 years commits the offense of possession of an intoxicating substance if he knowingly consumes or has in his possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of his arrest to violate this subsection.

(b) A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except as provided in 16-6-305 and except that he does not commit the offense if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) if the person:

(i) is less than 18 years of age, be fined not to exceed $50; or

(ii) is 18 years or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense; for a fourth or subsequent offense a person may be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both; and

(b) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978; amd. Sec. 1, Ch. 105, L. 1985; amd. Sec. 5, Ch. 217, L. 1987; amd. Sec. 65, Ch. 609, L. 1987; amd. Sec. 1, Ch. 412, L. 1989; amd. Sec. 5, Ch. 448, L. 1989; amd. Sec. 1, Ch. 477, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 412 in (2)(a) inserted "if the person"; in (2)(a)(i) inserted introductory clause relating to age; inserted (2)(a)(ii) relating to graduated penalties for persons 18 years or older; and in (2)(b), after "complete and", deleted "if financially able" and after "pay" inserted clause relating to direct or indirect payment.

Chapter 448 in (1)(b) inserted "except as provided in 16-6-305 and".

Chapter 477 in (1)(a), in first sentence near beginning, increased age to 19 years from 18 years, near middle, after "knowingly", inserted "consumes or", and at end deleted "other than an alcoholic beverage" and inserted second sentence providing that person need not be consuming or in possession of intoxicating substance at time of arrest to violate subsection; in (1)(b), near middle, inserted "if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305"; and made minor changes in form and phraseology.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Unlawful purchase of alcoholic beverage, 16-3-301.

Penalty for violation of liquor code by underage person, 16-6-314.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

History: En. Sec. 1, Ch. 505, L. 1979.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-626. Violation of protective order — misdemeanor. (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 9, Ch. 526, L. 1985.

45-5-627 through 45-5-630 reserved.

45-5-631. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 5 days, or both.

History: **En. Sec. 1, Ch. 493, L. 1987.**

45-5-632. Aggravated visitation interference. (1) A person who commits the offense of visitation interference by changing the residence of the minor child over whom he has legal custody to another state without giving written notice as required in 40-4-217 or without written consent of the person entitled to visitation pursuant to an existing court order commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both.

History: **En. Sec. 2, Ch. 493, L. 1987.**

45-5-633. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation;

(b) under an existing court order; or

(c) with reasonable cause.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

History: **En. Sec. 3, Ch. 493, L. 1987.**

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

45-6-101. Criminal mischief.
45-6-102. Negligent arson.
45-6-103. Arson.

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45-6-205. Possession of burglary tools.

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45-6-301. Theft.
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45-6-305. Theft of labor or services or use of property.
45-6-306. Obtaining communication services with intent to defraud.
45-6-307. Aiding the avoidance of telecommunications charges.
45-6-308. Unauthorized use of motor vehicles.

45-6-309. Failure to return rented or leased personal property.
45-6-310. Definition — computer use.
45-6-311. Unlawful use of a computer.
45-6-312. Unauthorized acquisition or transfer of food stamps.
45-6-313 reserved.
45-6-314. Theft by disposal of stolen property.
45-6-315. Defrauding creditors.
45-6-316. Issuing a bad check.
45-6-317. Deceptive practices.
45-6-318. Deceptive business practices.
45-6-319. Chain distributor schemes.
45-6-320 through 45-6-324 reserved.
45-6-325. Forgery.
45-6-326. Obscuring the identity of a machine.
45-6-327. Illegal branding or altering or obscuring a brand.

Part 1

Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 560, L. 1981; amd. Sec. 1, Ch. 581, L. 1983; amd. Sec. 1, Ch. 98, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) relating to aggregation of amounts in determining pecuniary loss.

Cross-References

Injury to election equipment, materials, and records, 13-35-206.

Injury to property associated with funeral or interment, 35-21-704.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "tamper", 45-2-101.

Definition of "value", 45-2-101.

Injury to water distribution system in irrigation district, 85-7-1924.

Duty of state conservation officers to enforce — where, 87-1-504.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 590, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Penalty for setting or leaving fire causing damage, 50-63-102.

Failure to extinguish campfire, 76-13-123.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 590, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Definition of "without consent", 45-5-501.

Release of arsonist — notification of Department of Justice, 53-1-104.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. Such privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To be effective under this section, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) If property has been posted in substantial compliance with subsection (2), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(4) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning such licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section.

(5) For purposes of this section, "land" means land as defined in 70-15-102.

(6) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201; amd. Sec. 1, Ch. 599, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "premises", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "vehicle", 45-2-101.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief, 45-6-101.
Theft, 45-6-301.
Unauthorized use of motor vehicles, 45-6-308.

45-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "premises", 45-2-101.
Definition of "enter or remain unlawfully", 45-6-201.
State conservation officers to enforce — where, 87-1-504.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 357, L. 1987.

Cross-References
Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "weapon", 45-2-101.
Definition of "enter or remain unlawfully", 45-6-201.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "possession", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "vehicle", 45-2-101.

Part 3

Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 581, L. 1983; amd. Sec. 21, Ch. 670, L. 1985; amd. Sec. 65, Ch. 464, L. 1987.

Cross-References

Civil penalty for shoplifting, 27-1-718.

Fraudulent obtaining of unemployment benefits, 39-51-3203.

Definition of "deception", 45-2-101.

Definition of "deprive", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "stolen property", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "value", 45-2-101.

Theft by disposal of stolen property, 45-6-314.

Fraudulent obtaining of public assistance, 53-2-107.

Unlawful transportation of trees, 76-13-601.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

Cross-References

Definition of "knowledge", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

Cross-References

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Theft, 45-6-301.

45-6-304. Effect of possession of stolen property. Possession of stolen property shall not constitute proof of the commission of the offense of theft. Such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.

Cross-References
Definition of "possession", 45-2-101.
Definition of "property", 45-2-101.
Definition of "stolen property", 45-2-101.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.

Cross-References
Definition of "deception", 45-2-101.
Definition of "obtain", 45-2-101.
Definition of "property", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.

Cross-References
Definition of "obtain", 45-2-101.
Definition of "tamper", 45-2-101.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305; amd. Sec. 14, Ch. 516, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "vehicle", 45-2-101.
Motor Vehicles, Title 61.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding $300 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981; amd. Sec. 3, Ch. 581, L. 1983.

45-6-310. Definition — computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

History: **En. Sec. 2, Ch. 485, L. 1981.**

45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $300 in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: **En. Sec. 3, Ch. 485, L. 1981; amd. Sec. 4, Ch. 581, L. 1983.**

45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds $150, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program.

History: **En. Sec. 1, Ch. 87, L. 1983.**

Cross-References

"Common scheme" defined, 45-2-101.

45-6-313 reserved.

45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days, as provided in 46-5-212, commits the offense of theft as defined in 45-6-301.

History: En. Sec. 1, Ch. 470, L. 1989.

Cross-References

Definition of "peace officer", 45-2-101.

Definition of "stolen property", 45-2-101.

Penalty for theft, 45-6-301.

Pawnbroker to surrender stolen property, 46-5-212.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

Cross-References

Definition of "security interest", 30-1-201.

Definition of "property", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 581, L. 1983; amd. Sec. 1, Ch. 383, L. 1985.

Cross-References

Treble damages for issuing bad check, 27-1-717.

Definition of "common scheme", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "value", 45-2-101.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 581, L. 1983.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "deception", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 581, L. 1983.

Cross-References

Definition of "common scheme", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "property", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "value", 45-2-101.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "obtains or exerts control", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters.
45-7-102. Threats and other improper influence in official and political matters.
45-7-103. Compensation for past official behavior.
45-7-104. Gifts to public servants by persons subject to their jurisdiction.

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45-7-203. Unsworn falsification to authorities.
45-7-204. False alarms to agencies of public safety.
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45-7-206. Tampering with witnesses and informants.
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45-7-209. Impersonating a public servant.
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Part 3 — Obstructing Governmental Operations

45-7-301. Resisting arrest.
45-7-302. Obstructing a peace officer or other public servant.
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Part 4 — Official Misconduct

45-7-401. Official misconduct.

Part 5 — Employer Misconduct

45-7-501. Employer misconduct.

Part 1

Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: **En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "benefit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "solicit", 45-2-101.

Improperly influencing grain inspector, sampler, or weigher, 80-4-703.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "threat", 45-2-101.

Intimidation, 45-5-203.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

Cross-References

Definition of "administrative proceeding", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "solicit", 45-2-101.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such

authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "pecuniary benefit", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "solicit", 45-2-101.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

General time limitations, 45-1-205.
Periods excluded from limitation, 45-1-206.
Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "official proceeding", 45-2-101.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.

Cross-References

Deceptive election practices, 13-35-207.
Application for certain property classifications, 15-6-151.
False affirmation in response to elector challenge, 20-20-303.
Assumed business name filings — false swearing, 30-13-218.
Trademark filings — false swearing, 30-13-319.
Business corporation filings — false swearing, 35-1-412.
Definition of "knowingly", 45-2-101.
Definition of "official proceeding", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "purposely", 45-2-101.
False information in driver's license application, 61-5-303.
Aircraft registration violations, 67-3-202.
False statement that public officer is not enforcing Montana Strip and Underground Mine Siting Act, 82-4-142.
False statement that public officer is not enforcing Montana Strip and Underground Mine Reclamation Act, 82-4-252.
Affidavit stating metal mine reclamation law is not being enforced, 82-4-354.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.**

Cross-References

Falsified petition for recall of a state-district officer, 2-16-612.

False report by employer of lobbyist, 5-7-209.

False entry upon a petition for ballot issue, 13-27-106.

Deceptive election practices, 13-35-207.

False statement to obtain unemployment benefits, 39-51-3202.

Definition of "benefit", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.**

Cross-References

Definition of "knowingly", 45-2-101.

Intimidation, 45-5-203.

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.**

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "witness", 45-2-101.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Tampering with petition for recall of a state-district officer, 2-16-612.

Tampering with petition for ballot issue, 13-27-106.

Tampering with election records and information, 13-35-205.

Tampering with election equipment, 13-35-206.
Deceptive election practices, 13-35-207.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-209. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210.

Cross-References
Definition of "acts", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $300, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 1, Ch. 151, L. 1981; amd. Sec. 8, Ch. 581, L. 1983.

Cross-References
Civil penalty for filing false claim, 17-8-231.
Fraudulent act by public contractor, 37-71-301.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "peace officer", 45-2-101.
Definition of "threat", 45-2-101.
Use of force in defense of person, 45-3-102.
Use of force in resisting arrest, 45-3-108.
Method of arrest, 46-6-104.
Manner of arrest without a warrant, 46-6-106.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.

Cross-References
Definition of "public servant", 7-1-4138, 45-2-101.
Interference with election officials, 13-35-203.
Definition of "knowingly", 45-2-101.
Definition of "peace officer", 45-2-101.
Interference with commissioners of irrigation district, 85-7-1924.

45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "offender", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.**

Cross-References

Definition of "another", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "peace officer", 45-2-101.

Assisting a peace officer, 46-6-402.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.**

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "misdemeanor", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection.

History: **En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306; amd. Sec. 1, Ch. 72, L. 1981; amd. Sec. 8, Ch. 583, L. 1981; amd. Sec. 5, Ch. 361, L. 1989.**

Compiler's Comments

1989 Amendment: In (1), near middle after "supervised release program", inserted "participation in a county jail work program under 7-32-2225 through 7-32-2227"; and in (2) inserted second sentence providing that person commits offense of escape if he knowingly or purposely fails to appear for work program under 7-32-2225 through 7-32-2227.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "official detention", 45-2-101.

Definition of "peace officer", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "weapon", 45-2-101.

Resisting arrest, 45-7-301.

Escape while on prisoner furlough program, 46-23-426.

Expense of trial for offenses committed in prison, 53-30-110.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention;

(ii) imprisoned in the state prison for a term not to exceed 10 years, if he conveys a dangerous drug, as defined in 50-32-101, to a person subject to official detention; or

(iii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: **En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307; amd. Sec. 1, Ch. 413, L. 1987.**

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

Cross-References
Definition of "misdemeanor", 45-2-101.
Definition of "purposely", 45-2-101.
Escape, 45-7-306.
Bail, Title 46, ch. 9.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

Cross-References

Meetings of public agencies to be open to public — exceptions, 2-3-203.

Discharge of election law duties, 13-35-204.

Prosecution of Commissioner of Political Practices, 13-37-105.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

Employee disclosure of information which would identify patient, 50-5-106.

Removal of Public Service Commission member, 69-1-113.

Official misconduct of official grain inspector, sampler, or weigher, 80-4-703.

Violations by Commissioner of irrigation district, 85-7-1507.

Part 5

Employer Misconduct

45-7-501. Employer misconduct. (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for his employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of his employees; or

(c) refuses to pay premiums that he is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for any term not to exceed 10 years, or both.

History: **En. Sec. 2, Ch. 586, L. 1987.**

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

Part 1 — Conduct Disruptive of Public Order

45-8-101. Disorderly conduct.
45-8-102. Failure of disorderly persons to disperse.
45-8-103. Riot.
45-8-104. Incitement to riot.
45-8-105. Criminal syndicalism.
45-8-106. Bringing armed men into the state.
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45-8-308. Manufacturer's register of machine guns.
45-8-309. Registration of machine guns — presumption from failure to register.
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45-8-315. Definition.
45-8-316. Carrying concealed weapons.

45-8-317. Exceptions.
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45-8-319. Permits to carry concealed weapons — fee — records — revocation.
45-8-320. Repealed.
45-8-321 through 45-8-330 reserved.
45-8-331. Switchblade knives.
45-8-332. Definitions.
45-8-333. Reckless or malicious use of explosives.
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45-8-335. Possession of explosives.
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45-8-337. Possession prima facie evidence of unlawful purpose.
45-8-338 and 45-8-339 reserved.
45-8-340. Sawed-off firearm — penalty.
45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident.
45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state.
45-8-343. Firing firearms.
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45-8-345. Criminal liability of parent or guardian — prosecution.
45-8-346 through 45-8-350 reserved.
45-8-351. Restriction on local government regulation of firearms.

Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(h), after "fire", deleted "impending explosion"; inserted (1)(j) expanding disorderly conduct to include transmitting false report of impending explosion that endangers human life; at beginning of (2) inserted exception clause; and inserted (3) providing criminal and civil penalties for transmitting false report of impending explosion.

Cross-References

Motorboat noise limitation — violation as disorderly conduct, 23-2-526, 87-1-506.

Knowingly defined, 45-2-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103; amd. Sec. 1, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Threat defined, 45-2-101.

Failure of disorderly persons to disperse, 45-8-102.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104; amd. Sec. 2, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Solicitation, 45-4-101.

Riot, 45-8-103.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.

Treason, Art. II, sec. 30, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Militia, Title 10, ch. 1.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

45-8-107 through 45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981.

Cross-References

Liability for permitting irrigation water to overflow, 7-14-2141.

Selling liquor illegally on premises, 16-6-312.

Motorboat noise limitation — violation as public nuisance, 23-2-526, 87-1-506.

Nuisances, Title 27, ch. 30.

Mausoleum or columbarium constructed in violation of law, 35-21-712.

Knowingly defined, 45-2-101.

Property defined, 45-2-101.

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: **En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).**

Cross-References

Nuisance, Title 27, ch. 30.
Premises defined, 45-2-101.
Public nuisance, 45-8-111.
Conditions of bail — violation thereof, 46-9-501 through 46-9-505.

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.**

Cross-References

Knowingly defined, 45-2-101.
Negligently defined, 45-2-101.
Possession defined, 45-2-101.
Tamper defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.
Assault — negligently causing bodily injury to another, 45-5-201.

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: **En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.**

Cross-References

Knowingly defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978; amd. Sec. 5, Ch. 571, L. 1989.

Compiler's Comments

1989 Amendment: At end of (5) substituted "45-8-206" for "45-8-202"; and made minor changes in style.

Cross-References

Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Indecent exposure, 45-5-504.

45-8-202. Repealed. Sec. 7, Ch. 571, L. 1989.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3; amd. Sec. 6, Ch. 571, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "45-8-206" for "45-8-202".

45-8-204. Repealed. Sec. 18, Ch. 440, L. 1989.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

History: En. Sec. 1, Ch. 571, L. 1989.

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

History: En. Sec. 2, Ch. 571, L. 1989.

45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

History: En. Sec. 3, Ch. 571, L. 1989.

45-8-208. Penalties. (1) A person who is convicted of violating 45-8-206 is guilty of a misdemeanor and may be fined an amount not to exceed $500 or be imprisoned for a term not to exceed 6 months, or both.

(2) For purposes of 45-8-206, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

History: En. Sec. 4, Ch. 571, L. 1989.

45-8-209. Harming a police dog — penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-201.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer.

History: **En. Secs. 1, 2, Ch. 536, L. 1985; amd. Sec. 1, Ch. 258, L. 1989.**

Compiler's Comments

1989 Amendment: In (1), after "kills", inserted "or otherwise injures"; and made minor changes in phraseology.

45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition. (1) A person commits the offense of causing animals to fight if he:

(a) owns, possesses, keeps, or trains any animal with the intent that such animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under his charge or control, or aids or abets any such act;

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both such fine and imprisonment.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except man.

History: **En. Secs. 2, 3, Ch. 410, L. 1985.**

45-8-211. Cruelty to animals. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If such person is the owner, he may be required to forfeit to the county in which he is convicted any animal affected. This

provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106; amd. Sec. 1, Ch. 148, L. 1985; amd. Sec. 1, Ch. 410, L. 1985.

Cross-References

Knowingly defined, 45-2-101.

Negligently defined, 45-2-101.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

Cross-References

Defamatory matter defined, 45-2-101.

Knowledge defined, 45-2-101.

Official proceeding defined, 45-2-101.

Person defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Threat defined, 45-2-101.

Control of telephone communication to and from a person holding hostages — nonliability of telephone company officials, 69-6-104.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

Cross-References
Benefit defined, 45-2-101.
Knowingly defined, 45-2-101.
Pecuniary defined, 45-2-101.
Purposely defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.

Part 3

Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

Cross-References
Forcible felony defined, 45-2-101.
Person defined, 45-2-101.
Weapon defined, 45-2-101.
Robbery, 45-5-401.
Criminal trespass, 45-6-202, 45-6-203.
Burglary, 45-6-204.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

Cross-References
Possession defined, 45-2-101.
Attempt, 45-4-103.
Aggravated assault, 45-5-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

Cross-References
Possession defined, 45-2-101.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

Cross-References
Conviction defined, 45-2-101.
Possession defined, 45-2-101.
Premises defined, 45-2-101.
Possession or use of a machine gun for offensive or aggressive purpose, 45-8-304.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

Cross-References
Vehicle defined, 45-2-101.
Weapon defined, 45-2-101.
Presumption of offensive or aggressive purpose, 45-8-305.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

Cross-References

Possession defined, 45-2-101.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

Cross-References

Purchase of rifle or shotgun in contiguous state by Montana resident, 45-8-341.

Purchase of rifle or shotgun in Montana by resident of contiguous state, 45-8-342.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

Cross-References

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-310 through 45-8-314 reserved.

45-8-315. Definition. "Concealed weapon" shall mean any weapon mentioned in 45-8-316 through 45-8-319 which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215.

Cross-References

Weapon defined, 45-2-101.

Permits to carry concealed weapons, 45-8-319.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.

Cross-References

Offense defined, 45-2-101.

Concealed weapon defined, 45-8-315.

45-8-317. Exceptions. Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(7) a person authorized by a judge of a district court of this state to carry a weapon; or

(8) the carrying of arms on one's own premises or at one's home or place of business.

History: En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212; amd. Sec. 2, Ch. 639, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (6) relating to probation and parole officers. Amendment effective July 1, 1989.

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail who, while at the state prison or a jail, while being conveyed to or from the Montana state prison or a jail, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison or jail officials, officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from jail or prison, or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 424, L. 1987.

Cross-References

Felony defined, 45-2-101.

Aggravated kidnapping, 45-5-303.

Transferring illegal or unauthorized communication, 45-7-307.

45-8-319. Permits to carry concealed weapons — fee — records — revocation. (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. The clerk shall collect a $25 fee when the petition is filed. The clerk shall deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations.

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good

moral character and peaceable disposition are proved. The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of .....

Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

....
Clerk"

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke the same. The date of the revocation shall be noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted before March 3, 1919, are hereby revoked.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214; amd. Sec. 3, Ch. 221, L. 1989.

Compiler's Comments

1989 Amendment: In (2) deleted second sentence that read: "No charge may be made for the filing of the petition"; and inserted last three sentences relating to fee for filing of petition and deposit of fee in the District Court fund or general fund for District Court operations. Amendment effective July 1, 1989.

Cross-References

Concealed weapon defined, 45-8-315.
Exceptions, 45-8-317.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

History: En. Sec. 8, Ch. 74, L. 1919; re-en. Sec. 11309, R.C.M. 1921; re-en. Sec. 11309, R.C.M. 1935; Sec. 94-3532, R.C.M. 1947; redes. 94-8-217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-217.

45-8-321 through 45-8-330 reserved.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 ½ inches long or longer which opens automatically

by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

Cross-References

Person defined, 45-2-101.

Vehicle defined, 45-2-101.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in rules adopted by the state fire marshal pursuant to 50-3-102(3).

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1; amd. Sec. 1, Ch. 187, L. 1985.

Cross-References

Weapon defined, 45-2-101.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Additional sentence for use of destructive device, 46-18-221.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Misdemeanor defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Definitions, 45-8-332.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

When no penalty is specified, 46-18-212.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Felony defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purpose defined, 45-2-101.

Destructive device defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — State Fire Marshal, 50-3-102.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

When accountability exists, 45-2-302.

Definitions, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — State Fire Marshal, 50-3-102.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.
Purposely defined, 45-2-101.
Possession prima facie evidence of unlawful purpose, 45-8-337.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.

Cross-References
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purpose defined, 45-2-101.
Definitions, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of a destructive device, 45-8-334.
Possession of explosives, 45-8-335.

45-8-338 and 45-8-339 reserved.

45-8-340. Sawed-off firearm — penalty. (1) A person commits the offense of possession of a sawed-off firearm if he knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a national guardsman;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm must be fined not less than $200 or more than $500 or imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, he must be fined an amount not to exceed $1,000 or imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. Sec. 1, Ch. 334, L. 1989.

Cross-References
Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Person defined, 45-2-101.
Possession defined, 45-2-101.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.

History: En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218; amd. Sec. 1, Ch. 20, L. 1981; amd. Sec. 1, Ch. 618, L. 1983.

Cross-References

Excessive fines and cruel and unusual punishments prohibited, Art. II, sec. 22, Mont. Const.

Local government with self-government powers — limit on fixing misdemeanor penalty, 7-1-111(8).

Disorderly conduct, 45-8-101.

45-8-344. Use of firearms by children under fourteen prohibited. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms of any description loaded with powder and lead, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963;

redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221.

Cross-References

Criminal liability of parent or guardian — prosecution, 45-8-345.

Safety instruction for resident hunters under 18 years of age, 87-2-105.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

Cross-References

When accountability exists, 45-2-302.

When no penalty is specified, 46-18-212.

45-8-346 through 45-8-350 reserved.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

History: En. Sec. 1, Ch. 589, L. 1985.

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.
45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.

45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.
45-9-109 and 45-9-110 reserved.
45-9-111. Imitation dangerous drugs — definitions.
45-9-112. Criminal sale of imitation dangerous drug — penalty.
45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty.
45-9-114. Criminal advertisement of imitation dangerous drug — penalty.
45-9-115. Criminal manufacture of imitation dangerous drug — penalty.
45-9-116. Imitation dangerous drugs — exemptions — rules.
45-9-117 through 45-9-120 reserved.
45-9-121. Criminal possession of toxic substances — penalty.

Part 2 — Procedural Provisions

45-9-201. Repealed.
45-9-202. Alternative sentencing authority.

Chapter Cross-References
Controlled substances, Title 50, ch. 32.

Part 1

Offenses Involving Dangerous Drugs

Part Cross-References
Controlled substances, Title 50, ch. 32.

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981; amd. Sec. 1, Ch. 393, L. 1983; amd. Sec. 16, Ch. 3, L. 1985; amd. Sec. 1, Ch. 478, L. 1987; amd. Sec. 1, Ch. 575, L. 1989.

Compiler's Comments

1989 Amendment: In (2) inserted "a narcotic drug, as defined in 50-32-101(18)(d), or". Amendment effective April 20, 1989.

Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Offense defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence of imprisonment.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 612, L. 1983; amd. Sec. 17, Ch. 3, L. 1985.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Alternative sentencing authority, 45-9-202.

Limitation on deferral or suspension of sentence, 46-18-201.

Dismissal after deferred imposition of sentence, 46-18-204.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 18, Ch. 3, L. 1985; amd. Sec. 1, Ch. 162, L. 1987.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

Cross-References

Obtain defined, 45-2-101.

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

Cross-References

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years.

History: En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981.

Cross-References

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) phenyl-2-propanone (phenylacetone) with the intent to manufacture amphetamine or methamphetamine, or both;

(b) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 202, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a), at beginning, deleted "both" after "(phenylacetone)", deleted "and formamide or hydroxylamine at the same time", and at end inserted "or methamphetamine, or both"; and deleted former (1)(b) that read: "(b) both phenyl-2-propanone (phenylacetone) and methylamine or N-methylformamide at the same time with the intent to manufacture methamphetamine".

Cross-References

Possession defined, 45-2-101.

Exemptions, 45-9-108.

Dangerous drug defined, 50-32-101.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal possession of precursors to dangerous drugs, 45-9-107.

45-9-109 and 45-9-110 reserved.

45-9-111. Imitation dangerous drugs — definitions. As used in 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

History: En. Sec. 1, Ch. 451, L. 1983; amd. Sec. 19, Ch. 3, L. 1985.

45-9-112. Criminal sale of imitation dangerous drug — penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug if he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal sale of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal sale of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

History: En. Sec. 2, Ch. 451, L. 1983.

45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with purpose to sell if he possesses with purpose to sell any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with purpose to sell shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 3, Ch. 451, L. 1983.

45-9-114. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 451, L. 1983.

45-9-115. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 451, L. 1983.

45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

Part 2

Procedural Provisions

45-9-201. Repealed. Sec. 3, Ch. 612, L. 1983.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137; amd. Sec. 7, Ch. 451, L. 1983.

Cross-References

Criminal possession of dangerous drugs, 45-9-102.

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

Criminal sale, or possession with purpose to sell, of imitation dangerous drug, 45-9-112, 45-9-113.

CHAPTER 10

MODEL DRUG PARAPHERNALIA ACT

Part 1 — General Provisions

45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.
45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.

Part 1

General Provisions

Part Cross-References

Destruction or appropriation of physical evidence in criminal cases, 46-5-306 through 46-5-309.

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;
(vii) chamber pipes;
(viii) carburetor pipes;
(ix) electric pipes;
(x) air-driven pipes;
(xi) chillums;
(xii) bongs;
(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: **En. Sec. 1, Ch. 481, L. 1981.**

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: **En. Sec. 2, Ch. 481, L. 1981.**

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 3, Ch. 481, L. 1981.**

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 4, Ch. 481, L. 1981.**

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: **En. Sec. 5, Ch. 481, L. 1981.**

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 6, Ch. 481, L. 1981.**

45-10-107. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this part.

History: **En. Sec. 7, Ch. 481, L. 1981.**

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
11. Commencement of Prosecution.
12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial in District Court.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
24. Treatment of Victims and Witnesses.
Chapters 25 through 29 reserved.
30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

46-1-101. Application.
46-1-102. Purpose and construction.

Part 2 — Definitions

46-1-201. Definitions.

Part 3 — Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.
46-1-302. Notice of appeal to be served on attorney general.

Chapter Cross-References

Publication of rules of criminal procedure, 1-11-204.

Courts and judicial officers, Title 3, ch. 1.

Court actions permitted on nonjudicial days, 3-1-302.

Subsequent applications for orders refused — contempt, 3-1-502, 3-1-503.

District Courts, Title 3, ch. 5.

Crimes, Title 45.

Part 1

Purpose and Application of Title

Part Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process, Art. II, sec. 17, Mont. Const.

Board of Crime Control, 2-15-2006, 44-4-301.

Types of actions — civil and criminal, 27-1-103.

Attorney General — criminal investigation, Title 44, ch. 2, part 1.

State system of criminal identification, Title 44, ch. 2, part 2.

Teletypewriter communications, Title 44, ch. 2, part 3.

Training coordinator for County Attorneys, Title 44, ch. 4, part 1.

Law Enforcement Academy, Title 44, ch. 10.

46-1-101. Application. This title shall govern the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Purpose and construction. These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

Part 2

Definitions

46-1-201. Definitions. For the purposes of this title, the words and phrases described in this section have the meanings designated in this section, except when a particular context clearly requires a different meaning:

(1) "Charge" means a written statement presented to a court accusing a person of the commission of an offense and includes complaint, information, and indictment.

(2) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(3) "Court" means a place where justice is judicially administered and includes a judge thereof.

(4) "Judge" means a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace, or city magistrate when a particular context so requires.

(5) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(6) "Magistrate" is an officer having power to issue a warrant for the arrest of a person charged with an offense and includes:

(a) the justices of the supreme court;
(b) the judges of the district courts;
(c) justices of the peace;
(d) city magistrates in towns or cities.

(7) "Offense" means a violation of any penal statute of this state or of any ordinance of its political subdivisions.

(8) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(9) "Sentence" is the punishment imposed on the defendant by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

Cross-References

Definition of "magistrate" as used in MCA, 1-1-202.

Definition of "peace officer" as used in MCA, 1-1-207.

Reserve and auxiliary officers, 7-32-201.

"Offense" defined, 45-2-101.

Part 3

Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Cross-References

Initiation of criminal appeal by state, Title 46, ch. 20, part 2.

CHAPTER 2

JURISDICTION

Part 1 — Jurisdiction of the State

46-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court.
46-2-202. Jurisdiction of justices' courts.
46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1

Jurisdiction of the State

Part Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1.

Criminal jurisdiction of the state — national forests, 2-1-210.

State criminal jurisdiction over Flathead Indians, 2-1-301.

State criminal jurisdiction over other tribes, 2-1-302, 2-1-303, 2-1-306.

Limits on local government jurisdiction, 7-1-111.

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.

Part 2

Jurisdiction of the Courts

Part Cross-References

Jurisdiction of District Courts and other courts, Art. VII, Mont. Const.

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, 3-5-302.

Jurisdiction of Justices' Courts, 3-10-303.

Jurisdiction of City Court, 3-11-102, 3-11-103.

Jurisdiction of military courts, 10-1-403, 10-1-408.

Jurisdiction of District and Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District and Justices' Courts — dentistry, 37-4-328.

Youth Court Act, Title 41, ch. 5.

Jurisdiction of Youth Court, 41-5-203.

Transfer from Youth Court to District Court, 41-5-206.

Determination of court's jurisdiction, 45-1-201.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; 3-5-302.

Jurisdiction of District Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District Courts — dentistry, 37-4-328.

Transfer from Youth Court to District Court, 41-5-206.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.

Cross-References

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.; 3-10-303.

Jurisdiction of Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of Justices' Courts — dentistry, 37-4-328.

Dangerous Drug Act, Title 45, ch. 9.

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).

Cross-References

Jurisdiction of City Courts, 3-11-102 through 3-11-104.

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).

CHAPTER 3

VENUE

Part 1 — General Provisions

46-3-101. Place of trial — change of venue.
46-3-102. When offense committed partly in one and partly in another county.
46-3-103. When offense committed on or near county boundary.
46-3-104. When a person commits or aids and abets an offense in another county.
46-3-105. Offenses committed while in transit.
46-3-106. Offense commenced outside the state.

Part 2 — Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places.
46-3-202. Stolen property.
46-3-203. Escape from prison.
46-3-204. Bigamy.
46-3-205. Kidnapping.
46-3-206. Treason.

Part 1

General Provisions

46-3-101. Place of trial — change of venue. (1) In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

(2) All objections to improper place of trial are waived by a defendant unless made before trial. If an objection is made, a hearing shall be held and the venue established before proceeding to trial.

History: En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-3-102. When offense committed partly in one and partly in another county. When two or more acts are requisite to the commission of any offense or when two or more acts or offenses are committed in furtherance of a common scheme, the trial may be in any county in which any of such acts or offenses occur.

History: En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402; amd. Sec. 1, Ch. 468, L. 1981.

46-3-103. When offense committed on or near county boundary. Where an offense is committed on or within one-half mile of the boundary of two or more counties and it cannot be readily determined in which county the offense was committed, the offender may be tried in any of such counties.

History: En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.

46-3-104. When a person commits or aids and abets an offense in another county. Where a person in one county commits, aids, abets, or procures the commission of an offense in another county, the offender may be tried in either county.

History: En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404.

Cross-References

When a person is legally accountable for the conduct of another, 45-2-302.

46-3-105. Offenses committed while in transit. If an offense is committed in, on, or against any instrument of conveyance passing within this state and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405.

46-3-106. Offense commenced outside the state. If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407.

Part 2

Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places. If cause of death is inflicted in one county and the death ensues in another county, the offender may be tried in either county.

History: En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

Cross-References
Homicide, Title 45, ch. 5, part 1.

46-3-202. Stolen property. When a person obtains property by theft, robbery, or deceptive practices, he may be tried in any county in which he exerted control over such property.

History: En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.

Cross-References
Theft and related offenses, Title 45, ch. 6, part 3.

46-3-203. Escape from prison. A person who escapes from prison may be tried in any county in the state.

History: En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.

Cross-References
Escape — definition — penalties, 45-7-306.

46-3-204. Bigamy. A person who commits the offense of bigamy may be tried in any county where the bigamous marriage or bigamous cohabitation has occurred.

History: En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.

Cross-References
Bigamy — definition — penalty, 45-5-611.
Marrying a bigamist — penalty, 45-5-612.

46-3-205. Kidnapping. A person who commits the offense of kidnapping may be tried in any county in which his victim has traveled or has been confined during the course of the offense.

History: En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.

Cross-References
Kidnapping, Title 45, ch. 5, part 3.

46-3-206. Treason. A person who commits the offense of treason may be tried in any county.

History: En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.

Cross-References
Treason — of what it consists, Art. II, sec. 30, Mont. Const.
Witnesses, 26-1-301.
Evidence in treason trial, 46-16-202.

CHAPTER 4

INVESTIGATIVE PROCEDURES

Part 1 — Investigation of Death—Autopsy

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Chapter Cross-References

County Coroner, Title 7, ch. 4, part 29.

Witness fees — inquests, 26-2-503.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812.

46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Property of deceased — suicide note, 7-4-2917.

46-4-103. Autopsy — when conducted, record, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.

(3) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner.

History: En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802.

Cross-References

Records and findings — copies maintained by State Medical Examiner's office, 44-3-214.

46-4-104. Liability of a mortuary or physician. No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813; amd. Sec. 2, Ch. 492, L. 1985.

Cross-References

Exemption from liability for autopsy, 44-3-401.

Part 2

Inquests

Part Cross-References

Jury of inquest defined, 3-15-105.

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809; amd. Sec. 1, Ch. 343, L. 1983.

Cross-References

Jury of inquest defined, 3-15-105.

46-4-202. Summoning and swearing in of jurors — instructions. (1) For holding such inquest, the coroner must summon a jury of not more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner must instruct the jurors as to their duties.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983.

Cross-References

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable immediately or at such time and place as he may designate, which may be served by any competent person. He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979.

Cross-References

Witnesses at inquests, 26-2-503.

46-4-204. Witness compelled to attend — examination. (1) A witness served with a subpoena may be compelled to attend and testify or be punished as upon a subpoena issued by a justice of the peace.

(2) The coroner shall and the county attorney may examine each witness, after which the witness may be examined by the jurors.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

Cross-References

Punishment for disobedience to a subpoena, 3-10-401.

Witness fees — inquests, 26-2-503.

46-4-205. Verdict of jury — form. After inspecting the body and hearing the testimony, the jury must render its verdict, which shall be by majority vote, and certify the same in writing signed by them and setting forth who the deceased person is, when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act.

History: En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807.

46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808.

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

Cross-References

Coroner's register, 7-4-2912.

Part 3

Investigative Subpoenas

Part Cross-References

Subpoenas, Title 26, ch. 2, part 1.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

46-4-301. Issuance of subpoena. Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1).

46-4-302. Penalty for failure to obey. (1) A person who, without just cause, fails to obey a subpoena served on him under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) of the contents and requirements of the subpoena;

(ii) that he has been granted immunity and may not be excused from testifying or producing evidence on the grounds that his testimony may incriminate him; and

(iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the county attorney or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2); amd. Sec. 1, Ch. 157, L. 1987.

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3).

46-4-304. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this part. Testimony shall be recorded. The witness has the right to have counsel present at all times. If he does not have funds to obtain counsel, the judge or justice shall appoint counsel for him.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721.

46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. After being granted immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722; amd. Sec. 3, Ch. 577, L. 1983.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part shall be the same as required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-111 through 46-15-114.

History: En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

46-5-101. Searches and seizures — when authorized.
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46-5-104. Admissibility in other proceedings.

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46-5-204. Filing of application.
46-5-205. Who may serve warrant.
46-5-206. Service and execution of warrant.
46-5-207. When warrant may be executed.
46-5-208. Use of force in execution.
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46-5-301. Return to court of things seized under search warrant.
46-5-302. Custody and disposition of things seized under search warrant.
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46-5-304. Return of property seized.
46-5-305. Disposition of unclaimed property.

46-5-306. Purpose.
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46-5-308. Order.
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Part 4 — Stop and Frisk

46-5-401. Stop and frisk — when authorized.
46-5-402. Stop and frisk — procedure.

Part 5 — Roadblocks

46-5-501. Definition of temporary roadblock.
46-5-502. Authority to establish roadblocks.
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46-5-504. Existing law preserved.
46-5-505. Penalty.

Chapter Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.

Part 1

Legality and Admissibility

Part Cross-References

Search of student rooms at university, 20-25-513.

Powers of Game Wardens — search and arrest, 87-1-506.

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and instruments, articles, or things may be seized in accordance with the provisions of this chapter when the search is made:

(1) as an incident to a lawful arrest;

(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon reasonable cause to be in such lawful possession by the person making the search;

(3) by the authority of a valid search warrant;

(4) under the authority and within the scope of a right of lawful inspection granted by law.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701.

Cross-References

Unreasonable searches and seizures prohibited, Art. II, sec. 11, Mont. Const.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. No search and seizure, whether with or without warrant, shall be held to be illegal as to a defendant if:

(1) the defendant has disclaimed any right to or interest in the place or object searched or the instruments, articles, or things seized;

(2) no right of the defendant has been infringed by the search and seizure; or

(3) any irregularities in the proceedings do not affect the substantial rights of the accused.

History: En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717.

46-5-104. Admissibility in other proceedings. Instruments, articles, or things lawfully seized are admissible as evidence upon any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.

Part 2

Search Warrants

46-5-201. Search warrant defined. A "search warrant" is an order:

(1) in writing;

(2) in the name of the state;

(3) signed by a judge;

(4) particularly describing the thing, place, or person to be searched and the instruments, articles, or things to be seized;

(5) directed to a peace officer commanding him to search for personal property and bring it before the judge.

History: En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.

46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

(a) states that an offense has been committed;

(b) states facts sufficient to show probable cause for issuance of the warrant;

(c) particularly describes the place, things, or persons to be searched; and

(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records

and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979.

Cross-References

Search warrants issuable for enforcement of liquor laws, 16-6-102.

Complaint against pawnbrokers or junk dealers, issuance and service of search warrant, 31-1-403, 31-1-404.

Penalty for procuring search warrant by false swearing, 45-7-202.

46-5-203. What may be seized with warrant. A search warrant may authorize the seizure of the following:

(1) contraband;

(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;

(3) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705.

46-5-204. Filing of application. The application on which the warrant is issued shall be retained by the judge but need not be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been executed or has been returned "not executed".

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706.

46-5-205. Who may serve warrant. A search warrant may in all cases be served by any of the officers mentioned in its direction but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707.

46-5-206. Service and execution of warrant. Service of a search warrant is made by exhibiting the original warrant at the place to be searched. If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person from whom any instruments, articles, or things are seized or, if no person is available, the copy and receipt shall be left at the place from which the instruments, articles, or things were seized. Failure to give or leave such a receipt shall not render the evidence inadmissible in a trial.

History: **En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708.**

46-5-207. When warrant may be executed. (1) The warrant may be executed at any time of any day or night.

(2) The warrant shall be executed within 10 days from the time of issuance. Any warrant not executed within such time shall be void and shall be returned to the court or the judge issuing the same as "not executed".

History: **En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711.**

46-5-208. Use of force in execution. All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant.

History: **En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709.**

46-5-209. Detention and search of persons on premises. In the execution of the warrant the person executing the same may reasonably detain and search any person in the place at the time:

(1) to protect himself from attack; or

(2) to prevent the disposal or concealment of any instruments, articles, or things particularly described in the warrant.

History: **En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710.**

46-5-210 and 46-5-211 reserved.

46-5-212. Pawnbroker to surrender stolen property. When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to him or purchased by him is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days and shall surrender the property to the peace officer upon service of a search warrant by a peace officer pursuant to 31-1-401 through 31-1-406.

History: **En. Sec. 2, Ch. 470, L. 1989.**

Cross-References

Theft by disposal of stolen property, 45-6-314.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant. The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

History: **En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712.**

46-5-302. Custody and disposition of things seized under search warrant. The judge before whom the instruments, articles, or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

History: En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.

Cross-References

Seizure and forfeiture of unlawful cigarettes, 16-11-147.

46-5-303. Custody and disposition of things seized without search warrant. (1) Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.

History: En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714.

Cross-References

Return of crime victim's property, 46-24-206.

46-5-304. Return of property seized. (1) Any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership.

(2) If the right to possession is proved to the judge's satisfaction, he shall order the property other than contraband returned if:

(a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) all proceedings in which it might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized, it must be disposed of pursuant to the provisions of 46-5-306 through 46-5-309.

History: En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979; amd. Sec. 5, Ch. 348, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "it must be disposed of pursuant to the provisions of 46-5-306 through 46-5-309" for "and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury."

Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

46-5-306. Purpose. The purpose of 46-5-306 through 46-5-309 is to provide a procedure by which physical evidence in criminal cases may be destroyed or appropriated for law enforcement use when prosecutions have been completed and no further legal proceeding is contemplated or when it does not appear that criminal charges will be initiated.

History: **En. Sec. 1, Ch. 348, L. 1989.**

46-5-307. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

History: **En. Sec. 2, Ch. 348, L. 1989.**

46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition.

History: En. Sec. 3, Ch. 348, L. 1989.

46-5-309. Applicability of other statutes. The provisions of Title 70, chapter 9, relating to the disposition of unclaimed or abandoned property, do not apply to actions filed pursuant to 46-5-306 through 46-5-309.

History: En. Sec. 4, Ch. 348, L. 1989.

Part 4

Stop and Frisk

46-5-401. Stop and frisk — when authorized. (1) A peace officer may stop any person he observes in circumstances that give him reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:

(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) he has reasonable cause to suspect the person committed the felony; and

(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3).

46-5-402. Stop and frisk — procedure. (1) A peace officer who has lawfully stopped a person under this part may:

(a) frisk the person and take other reasonably necessary steps for protection if he has reasonable cause to suspect that the person is armed and presently dangerous to him or another person present; and

(b) take possession of any object that he discovers during the course of the frisk if he has probable cause to believe the object is a deadly weapon.

(2) A peace officer who has lawfully stopped a person under this part may demand of the person his name and his present or last address.

(3) A peace officer who has lawfully stopped a person under this part shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7).

Part 5

Roadblocks

46-5-501. Definition of temporary roadblock. For the purpose of this part, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law enforcement officers of this state and their deputies for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

Cross-References

Inspections of vehicles by personnel of the Department of Highways, 61-9-501.

46-5-502. Authority to establish roadblocks. The duly elected or appointed law enforcement officers of this state and their deputies are hereby authorized to establish, in their respective jurisdictions or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b).

46-5-503. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

(1) the temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;

(2) at the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(3) at the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic at a distance of not less than 100 yards;

(4) at a distance of not less than 200 yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway containing any wording of sufficient size and luminosity to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).

46-5-504. Existing law preserved. Nothing in this part shall be deemed to limit or encroach upon the existing authority of Montana law enforcement officers in the performance of their duties involving traffic control.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).

46-5-505. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both fine and imprisonment.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).

CHAPTER 6

ARREST

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Use of force in resisting arrest, 45-3-108.

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Part 1

General Provisions

46-6-101. Definitions. (1) An "arrest" is taking a person into custody in the manner authorized by law.

(2) A "warrant of arrest" is a written order from a court directed to a peace officer or to some other person specifically named commanding him to arrest a person. This term includes the original warrant of arrest or a copy certified by the issuing court.

(3) A "summons" is a written order issued by the court which commands a person to appear before a court at a stated time and place.

(4) A "notice to appear" is a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein.

History: **En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.**

Cross-References

Issuance of arrest warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

Immunity of electors at polling places, Art. IV, sec. 6, Mont. Const.

Immunity of legislators from arrest, Art. V, sec. 8, Mont. Const.

Exemption from arrest and service of process, 46-15-114.

46-6-103. Magistrate may order arrest. A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate.

History: En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain him.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602.

46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest. However, a person may be arrested in his home or private dwelling at night if he is being arrested pursuant to 46-6-401(2) for the offense of domestic abuse or aggravated assault against a family member or household member. A summons of a peace officer to the home or private dwelling by a family or household member constitutes an exigent circumstance for making an arrest pursuant to 46-6-401(2).

History: En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607; amd. Sec. 4, Ch. 700, L. 1985.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-106. Manner of arrest without a warrant. A peace officer or person making an arrest without a warrant must inform the person to be arrested of his authority, if any, of the intention to arrest him, and the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission or after an escape or when the giving of such information will imperil the arrest.

History: **En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606.**

Cross-References

Arrest of accused without warrant, 46-30-301.

Part 2

Arrest Warrants

Part Cross-References

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

46-6-201. Issuance of arrest warrant upon complaint. (1) A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county attorney, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: **En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3).**

Cross-References

Setting and accepting bail under warrant of arrest, 46-9-303.

Issuance of warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-202. Form of warrant — execution. (1) A warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office.

(2) The warrant of arrest may specify the amount of bail.

(3) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by 7-32-4301 and 7-32-4302.

(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6).

Cross-References

Bail set in warrant — acceptance by peace officer, 46-9-303.

46-6-203. Manner of arrest with a warrant. When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the peace officer has an opportunity to so inform him or when the giving of such information will imperil the arrest. The peace officer need not have the warrant in his possession at the time of the arrest, but after the arrest the warrant must be shown to the person arrested as soon as practicable if such person so requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

Part 3

Summons

46-6-301. When summons may be issued — service. (1) When authorized to issue a warrant of arrest, a court may in lieu thereof issue a summons.

(2) The summons may be personally served in the same manner as the summons in a civil action.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).

46-6-302. Form of summons. The summons shall:

(1) be in writing in the name of the state of Montana;

(2) state the name of the person summoned and his address, if known;

(3) set forth the nature of the offense;

(4) state the date when issued and the municipality or county where issued;

(5) be signed by the judge of the court with the title of his office; and

(6) command the person to appear before a court at a certain time and place.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b).

46-6-303. When warrant issued after summons. Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons, he may at once issue a warrant of arrest.

History: En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613.

46-6-304. Summons to a corporation. (1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.

(3) If after being summoned the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued and such court shall proceed to trial and judgment without further process.

History: En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615.

Cross-References

Registered office and registered agent, 35-1-305.

Part 4

Arrest by a Peace Officer

Part Cross-References

Duty of Police Chief to arrest, 7-32-4105.

Offenses for which patrol officers can make arrests, 44-1-1001.

Powers of Game Wardens — search and arrest, 87-1-506.

46-6-401. Circumstances under which a peace officer may make arrests. (1) A peace officer may arrest a person when:

(a) he has a warrant commanding that such person be arrested;

(b) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(c) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction; or

(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.

(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to

a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

History: En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608; amd. Sec. 5, Ch. 700, L. 1985.

Cross-References

Reserve and auxiliary officers, 7-32-201.

Criminal offense of domestic abuse, 45-5-206.

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(3) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer.

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609.

Cross-References

Failure to aid a peace officer, 45-7-304.

46-6-403. Release by officer of person arrested. A peace officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested.

History: En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610.

46-6-404. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

(2) The notice shall:

(a) be in writing;

(b) state the name of the person and his address, if known;

(c) set forth the nature of the offense;

(d) be signed by the officer issuing the notice; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or warrant of arrest may issue.

History: En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614.

46-6-405 through 46-6-410 reserved.

46-6-411. Close pursuit — arrest by officers of another state — procedure. (1) Any peace officer of another state of the United States who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him shall have the same authority to arrest and hold in custody such person as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with the provisions of subsection (1), he shall without unnecessary delay take the person arrested before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, the word "state" shall include the District of Columbia.

(5) This section may be cited as the "Uniform Act on Close Pursuit".

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part).

46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require his immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. Sec. 1, Ch. 107, L. 1983.

Cross-References

Sovereignty and jurisdiction of the state, 2-1-102.

46-6-413 through 46-6-420 reserved.

46-6-421. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but he does not make an arrest, he shall file a written report with the officer commanding the law enforcement agency employing him, setting forth the reason or reasons for his decision.

History: En. Sec. 2, Ch. 700, L. 1985.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-422. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

History: **En. Sec. 3, Ch. 700, L. 1985.**

Part 5

Arrest by a Private Person

46-6-501. Definitions. As used in this part, the following definitions apply:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment:

(a) concealing merchandise upon the person or in a container or otherwise removing such merchandise from full view while upon the premises;

(b) removing, changing, or altering any price tag;

(c) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or

(d) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise;

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: **En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.**

Cross-References

Control of shoplifting, 7-32-4303.

46-6-502. When arrest by private person authorized. A private person may arrest another when:

(1) he believes on reasonable grounds that an offense is being committed or attempted in his presence;

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-503. Restrictions on arrest by merchant — liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-504. Repealed. Sec. 1, Ch. 205, L. 1987.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

46-7-101. Bringing arrested person before a court.
46-7-102. Duty of the court at initial appearance.
46-7-103. Preliminary hearing in justice's court.

Part 1

General Provisions

46-7-101. Bringing arrested person before a court. (1) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901.

46-7-102. Duty of the court at initial appearance. (1) The judge shall inform the defendant:

(a) of the charge against him;

(b) of his right to counsel;

(c) of his right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) that he is not required to make a statement and that any statement made by him may be offered in evidence at his trial.

(2) The judge shall admit the defendant to bail in accordance with the provisions of this title.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

Right to counsel, 46-8-101.

Bail provisions, Title 46, ch. 9.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-7-103. Preliminary hearing in justice's court. After the initial appearance a justice's court shall, within a reasonable time, hold a preliminary examination unless the defendant waives a preliminary examination, the district court has granted leave to file an information, an indictment has been returned, or the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

Cross-References

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303.

Definition of preliminary examination, 46-10-101.

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right—Indigency Repayment of Costs

46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.
46-8-105 through 46-8-110 reserved.
46-8-111. Eligibility for court-appointed counsel.
46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel.
46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence.
46-8-114. Time and method of payment of costs.
46-8-115. Effect of nonpayment of costs.

Part 2 — Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice may assign counsel to defend him.

History: En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001; amd. Sec. 1, Ch. 415, L. 1981.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-8-102. Waiver of counsel. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501.

History: En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979.

46-8-103. Duration of appointment. Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal, unless relieved by order of the court.

History: En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003.

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.

46-8-105 through 46-8-110 reserved.

46-8-111. Eligibility for court-appointed counsel. (1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Except as provided in subsection (3), appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

(3) In determining whether a minor charged with an offense which, if committed by an adult, would be a felony is eligible for court-appointed counsel, the court shall consider the resources of the minor and his parents and may deny or appoint counsel accordingly. The minor and his parents shall submit under oath the verified financial statement required by subsection (1).

History: En. Sec. 2, Ch. 415, L. 1981; amd. Sec. 1, Ch. 479, L. 1987.

46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel. The court shall inform the defendant that:

(1) if he makes a false statement under oath regarding his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the compensation and expenses incurred by his court-appointed counsel as a part of or a condition under his sentence should he be convicted of an offense.

History: En. Sec. 3, Ch. 415, L. 1981.

Cross-References

False swearing — penalty, 45-7-202.

46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence. (1) Under the provisions of 46-18-201, the court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his sentence.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 4, Ch. 415, L. 1981.

46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county, agency, state agency, or local government unit responsible for the expenses of court-appointed counsel as provided for in 46-8-201.

History: En. Sec. 5, Ch. 415, L. 1981; amd. Sec. 1, Ch. 295, L. 1985; amd. Sec. 9, Ch. 680, L. 1985.

46-8-115. Effect of nonpayment of costs. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment thereof or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why his default should not be treated as contempt of court and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel shall be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any

other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the department of commerce, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 295, L. 1985; amd. Sec. 10, Ch. 680, L. 1985; amd. Sec. 8, Ch. 1, Sp. L. 1985.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at state expense payable according to procedures established under 3-5-902(1) and, to the extent those costs are not paid by the state, at county expense in accordance with 3-5-901(3) and 3-5-902(1).

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006; amd. Sec. 11, Ch. 680, L. 1985.

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

46-9-101. Definition and purpose.
46-9-102. Bailable offenses.
46-9-103. Bail pending sentence or appeal.
46-9-104. Bail on a new trial.
46-9-105 through 46-9-110 reserved.
46-9-111. Release on own recognizance.

Part 2 — Bail—General Procedural Provisions

46-9-201. Who may admit to bail.
46-9-202. Giving bail before another court or judge.
46-9-203. Report to county attorney concerning drug users.
46-9-204. Discharge of defendant.
46-9-205. Surrender of defendant.

Part 3 — The Amount of Bail

46-9-301. Determining the amount of bail.
46-9-302. Bail schedule for minor offenses — acceptance by peace officer.
46-9-303. Bail set in warrant — acceptance by peace officer.
46-9-304 through 46-9-310 reserved.
46-9-311. Reduction, increase, revocation, or substitution of bail.

Part 4 — Furnishing Bail

46-9-401. How bail furnished.
46-9-402. Persons prohibited from furnishing bail security.
46-9-403. Qualifying property as bail.
46-9-404. Justifying the bail.
46-9-405 through 46-9-410 reserved.
46-9-411. Definition of guaranteed arrest bond certificate.
46-9-412. Sureties for guaranteed arrest bond certificates.
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46-9-414. Motor vehicle violations — certificates accepted in lieu of cash.

Part 5 — Conditions of Bail—Violation Thereof

46-9-501. Form of conditions of bail.
46-9-502. Conditions performed — bail discharged.
46-9-503. Conditions not performed — forfeiture.
46-9-504. Procedure on forfeiture — restitution.
46-9-505. Issuance of arrest warrant — redetermining bail.

Chapter Cross-References
Bail, Art. II, sec. 21, Mont. Const.

Part 1

Definition and Availability of Bail

46-9-101. Definition and purpose. "Bail" is the security given for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

History: En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101; amd. Sec. 1, Ch. 692, L. 1985.

Cross-References
District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

Justice Court jurisdiction, Art. VII, sec. 5, Mont. Const.; Title 3, ch. 10, part 3.

City Court jurisdiction — concurrent with Justices' Courts, 3-11-102.
City Court jurisdiction — exclusive, 3-11-103.
Classification of criminal offenses for purpose of determining court's jurisdiction, 45-1-201.
Criminal jurisdiction of City Courts, 46-2-203.

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

Cross-References

Bailable offenses, Art. II, sec. 21, Mont. Const.
Duty of judge to admit defendant to bail in accordance with law, 46-7-102.

46-9-103. Bail pending sentence or appeal. (1) (a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail.

(b) A person found guilty of an offense and awaiting imposition or execution of sentence or a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal may be admitted to bail only if the judge finds that the person is not likely to flee and does not pose a danger to the safety of any other person or the community.

(2) A person found guilty of the offense of deliberate homicide is presumed to pose a danger to the safety of the community, which presumption is rebuttable.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979; amd. Sec. 2, Ch. 692, L. 1985.

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.

History: En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.

46-9-105 through 46-9-110 reserved.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

History: En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. Any judge may admit any defendant properly appearing before him in such proceeding to bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall be continued provided the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any judge before whom the trial was had or any judge having the power to issue a writ of habeas corpus may admit the defendant to bail.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a).

46-9-202. Giving bail before another court or judge. The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending.

History: En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105.

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.

46-9-204. Discharge of defendant. Upon allowance and acceptance of bail the defendant, if he is in custody, must be discharged.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).

46-9-205. Surrender of defendant. (1) (a) At any time before the forfeiture of bail, the defendant may surrender himself to the officer to whose custody he was committed at the time of giving bail.

(b) At any time before the forfeiture of bail, the sureties or surety company may surrender the defendant to the officer to whose custody he was committed and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

(2) The officer must detain the defendant in his custody as upon commitment and shall file a certificate in the court having jurisdiction of the defendant acknowledging the surrender. Such court may then order the bail exonerated.

History: En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115.

Part 3

The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;
(2) sufficient to assure compliance with the conditions set forth in the bail;
(3) sufficient to protect any person from bodily injury;
(4) not oppressive;
(5) commensurate with the nature of the offense charged;
(6) considerate of the financial ability of the accused;
(7) considerate of the defendant's prior record;
(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;
(9) considerate of the defendant's family relationships and ties;
(10) considerate of the defendant's employment status; and
(11) sufficient to include the charge imposed in 46-18-236.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110; amd. Sec. 3, Ch. 692, L. 1985; amd. Sec. 2, Ch. 17, Sp. L. June 1986.

Cross-References

Excessive bail prohibited, Art. II, sec. 22, Mont. Const.

46-9-302. Bail schedule for minor offenses — acceptance by peace officer. (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses, except for offenses amounting to felonies and the offense of domestic abuse.

(2) A peace officer may accept bail in behalf of the justice of the peace or city judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103; amd. Sec. 6, Ch. 700, L. 1985.

Cross-References

Duty of patrol officer to accept bail, 44-1-1101.

Procedure for acceptance of bail by patrol officer, 44-1-1102.

Criminal offense of domestic abuse, 45-5-206.

46-9-303. Bail set in warrant — acceptance by peace officer. A peace officer may accept cash bail in behalf of a judge whenever the warrant of arrest specifies the amount of bail. Whenever a peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

Cross-References

Warrant of arrest may specify bail, 46-6-202.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. How bail furnished. Bail may be furnished by the defendant in any of the following ways:

(1) by a deposit with the clerk of the court of an amount equal to the required bail of cash, stocks, or bonds or any combination thereof approved by the judge;

(2) by real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail;

(3) by written undertaking executed by the defendant and by two sufficient sureties; or

(4) by a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

Cross-References

Attorney not to become surety on bond, 37-61-419.

46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks and bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which must contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state has a lien on such real estate from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the

amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be executed by any domestic or foreign surety company which is qualified to transact surety business in this state.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

46-9-404. Justifying the bail. The sureties must in all cases justify by sworn affidavit that they each possess the qualifications provided in 46-9-403. The court may further examine the sufficiency of the bail, upon oath, in such manner as it may deem proper. In all cases the state may challenge the bail or the sufficiency of the sureties.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Definition of guaranteed arrest bond certificate. The term "guaranteed arrest bond certificate" means any printed card or other certificate which:

(1) is issued by an automobile club or association or insurance company to any of its members or insureds; and

(2) is signed by the member or insured and contains a printed statement that the automobile club, automobile association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana:

(a) guarantee the appearance of the person whose signature appears on the card or certificate; and

(b) will, in the event of the failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not exceeding $5,000.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3); amd. Sec. 1, Ch. 415, L. 1989.

Compiler's Comments

1989 Amendment: In (2)(b) increased maximum value of guaranteed arrest bond certificate from $100 to $5,000.

Cross-References

Surety insurance, 33-1-211.
Suretyship, Title 33, ch. 26.

46-9-412. Sureties for guaranteed arrest bond certificates. (1) A domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not exceeding $5,000 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The undertaking shall be in a form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $5,000 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2); amd. Sec. 2, Ch. 415, L. 1989.

Compiler's Comments

1989 Amendment: In two places increased maximum value of guaranteed arrest bond surety from $100 to $5,000; and made minor change in phraseology.

Cross-References

Surety insurance, 33-1-211.

Suretyship, Title 33, ch. 26.

46-9-413. Certification of sureties to courts — withdrawal as surety. (1) The commissioner of insurance shall certify to each justice of the peace, city magistrate, and district judge the names of surety companies which have become sureties with respect to guaranteed arrest bond certificates and shall likewise immediately notify such official upon the withdrawal of such company as surety.

(2) No such withdrawal by any company shall be effective for 30 days after the filing thereof with the state insurance commissioner.

History: En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.

46-9-414. Motor vehicle violations — certificates accepted in lieu of cash. A guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall, when posted by the person whose signature appears on the certificate, be accepted in lieu of cash bail in an amount not exceeding $5,000 as a bail bond to guarantee the appearance of the person in any court, including municipal courts, in this state at a time as may be required by the court when the person was arrested for violation of a motor vehicle law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122; amd. Sec. 3, Ch. 415, L. 1989.

Compiler's Comments

1989 Amendment: Increased maximum value of guaranteed arrest bond certificate used as bail bond from $100 to $5,000; and made minor changes in phraseology.

Part 5

Conditions of Bail — Violation Thereof

Part Cross-References
Bail-jumping, 45-7-308.

46-9-501. Form of conditions of bail. (1) If a person is admitted to bail, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and

(b) any other conditions that the court may reasonably prescribe to assure his appearance as required and to protect any person from bodily injury, including but not limited to a condition that the person admitted to bail:

(i) remain in the custody of a designated person who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the person will appear as required;

(ii) maintain employment or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on travel;

(v) avoid all contact with an alleged victim of the crime or limit contact with a potential witness who may testify concerning the offense, except that contact which is necessary to the preparation of the defense;

(vi) report on a regular basis to a designated law enforcement agency or other pretrial services agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from the use of alcohol or a dangerous drug without a prescription from a licensed medical practitioner;

(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.

(2) The judge may at any time amend his order to impose additional or different conditions of release.

(3) If the defendant is admitted to bail after conviction, the conditions of bail, in addition to those set forth in subsection (1), shall be that:

(a) he will duly prosecute his appeal; and

(b) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118; amd. Sec. 4, Ch. 692, L. 1985.

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Conditions not performed — forfeiture. (1) If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited.

(2) If such forfeiture is declared by a district court, notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address.

(3) If at any time within 30 days after the forfeiture the defendant or his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion, may direct the forfeiture of the bail to be discharged upon such terms as may be just.

(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c).

Cross-References

Disposition of bail forfeited for traffic offenses, 20-7-505.

Forfeiture of bail, 46-30-305.

46-9-504. Procedure on forfeiture — restitution. (1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for

which the court has received bail. Except as provided in 87-1-111, whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss. An order to require restitution is a judgment against the defendant and his sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in subsection (1). Provided no such determination or decision under this subsection shall be admissible as evidence in any other civil action, nor shall it be res judicata in any other civil action.

History: **En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117; amd. Sec. 1, Ch. 132, L. 1985; amd. Sec. 1, Ch. 142, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning of second sentence of (2) inserted exception clause. Amendment effective March 18, 1989.

Cross-References

Execution, Title 25, ch. 13 and 14.

Execution sale, Title 25, ch. 13, part 7.

Redemption of real property after execution sale, Title 25, ch. 13, part 8.

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(2) On verified application by the state setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: **En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107.**

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

46-10-101. Definition of preliminary examination.
46-10-102. Waiver of preliminary examination.

Part 2 — Procedure at Preliminary Examination

46-10-201. When examination not public.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of examination.

Part 1

General Provisions

46-10-101. Definition of preliminary examination. A "preliminary examination" is a hearing before a justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Justices' Courts — examining courts in cases of felonies, Art. VII, sec. 5, Mont. Const.

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303, 46-7-103.

46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the justice shall hold him to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979.

Part 2

Procedure at Preliminary Examination

46-10-201. When examination not public. The justice may, in his discretion, and must upon the request of the defendant exclude from the preliminary examination every person not officially associated with the case before the court.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

(2) During the examination of any witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979.

46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant, the justice shall hold him to answer to the court having jurisdiction of the offense; otherwise, the justice shall discharge him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979.

46-10-204. Record of examination. (1) The testimony of each witness, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the justice holds the defendant to answer, he shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979.

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution.
46-11-102. When given methods required.

Part 2 — Filing of Information

46-11-201. Leave to file information.
46-11-202. Leave to file information — when defendant is district judge.
46-11-203. Time for filing information.
46-11-204. Procedure when county attorney decides not to file.

Part 3 — Grand Jury

46-11-301. Summoning grand juries — composition.
46-11-302. Objections to grand jury and to grand jurors.
46-11-303. Foreman — powers and duties.
46-11-304 through 46-11-310 reserved.
46-11-311. Charge by court.
46-11-312. Powers and duties of grand jury.
46-11-313. Subpoena of witnesses.
46-11-314. Reception of evidence.
46-11-315. Advice and assistance to grand jury — who may be present.
46-11-316. Stenographer — transcript of testimony.
46-11-317. Secrecy of proceedings and disclosure.
46-11-318. Discharging jury.
46-11-319. Expenses of grand jury.
46-11-320 through 46-11-330 reserved.
46-11-331. Finding an indictment.
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Part 4 — The Charge

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Part 5 — Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions.
46-11-502. Prosecution when conduct constitutes more than one offense.
46-11-503. When prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction — when a bar.

46-11-505. When former prosecution not a bar.

Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Chapter Cross-References

Initiation of criminal proceedings — grand jury, Art. II, sec. 20, Mont. Const.

Repeal of law creating criminal offenses — when bar to prosecution, 1-2-205.

Attorney General or County Attorney to prosecute — Legislative Audit Act, 5-13-310.

Power of Commissioner of Political Practices, Title 13, ch. 37, part 1.

Duty of County Attorney — election law violations, 13-37-124, 13-37-125.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

County Attorney to prosecute violations of pharmacist regulations, 37-7-203.

Prosecution — unemployment compensation, 39-51-309.

Statute of Limitations, 45-1-205, 45-1-206.

Commencing prosecution — official misconduct, 45-7-401.

Immunity for witness — Montana Consumer Product Safety Act of 1975, 50-30-108.

Notice before prosecution — Montana Consumer Product Safety Act of 1975, 50-30-302, 50-30-303.

Notice and chance to present views before criminal prosecution — Montana Food, Drug, and Cosmetic Act, 50-31-504, 50-31-505.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. When authorized by law, a prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver thereof;

(3) an information after leave of court has been granted;

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501.

Cross-References

General time limitations — prosecution is commenced when an indictment is found or an information or complaint is filed, 45-1-205.

46-11-102. When given methods required. (1) All prosecutions of offenses triable in the district courts shall be by indictment or information.

(2) All other prosecutions of offenses may be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502.

Part 2

Filing of Information

46-11-201. Leave to file information. (1) The county attorney may apply directly to the district court for permission to file an information against a named defendant. The application must be by affidavit supported by such evidence as the judge may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge shall grant leave to file the information, otherwise the application shall be denied.

(2) When there has been granted leave to file an information against the defendant, a warrant may issue for his arrest and he must be brought before the court unless the court orders otherwise.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b).

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-11-202. Leave to file information — when defendant is district judge. (1) If the person against whom an information is sought to be filed is a district court judge, the county attorney shall apply directly to the supreme court for permission to file the information. The supreme court shall then proceed in the manner provided in 46-11-201(1).

(2) When leave is granted by the supreme court, it shall designate and direct a judge of the district court of another district to preside at the trial of such information and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. All necessary records shall be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. After the defendant has been examined and held to answer or has waived preliminary examination as provided in chapter 10 or after leave of court has been granted as provided in 46-11-201 and 46-11-202, the county attorney must file within 30 days in the proper district court an information charging the defendant with the offense for which he is held to answer or any other offense disclosed by the evidence. If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.

History: En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302.

46-11-204. Procedure when county attorney decides not to file. If the county attorney determines an information ought not to be filed after the defendant has been held to answer following a preliminary examination or waiver thereof or after leave to file has been granted, he must within 30 days make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information. The court must examine such statements together with the evidence filed in the case, and if upon such examination the court is not satisfied with the statement, the county attorney shall be directed and required by the court to file the proper information and bring the case to trial.

History: En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.

Part 3

Grand Jury

Part Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Grand jury defined, 3-15-103.

Grand jury — composition, summoning, impaneling, Title 3, ch. 15, part 6.

46-11-301. Summoning grand juries — composition. (1) A grand jury must only be drawn and summoned when the district judge, in his discretion, considers a grand jury necessary and shall so order. The composition and drawing of a grand jury shall be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty, he may be replaced by an alternate.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part).

46-11-302. Objections to grand jury and to grand jurors. (1) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently, and in the latter event, the court may impanel another person or persons in place of the juror or jurors discharged.

(2) A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to 46-11-303 that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402.

46-11-303. Foreman — powers and duties. The court shall appoint one of the jurors to be foreman. The foreman shall have the power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be made public except on order of the court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403.

46-11-304 through 46-11-310 reserved.

46-11-311. Charge by court. When the grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In doing so, the court shall give the grand jurors such information as it deems proper or as is required by law as to their duties and as to any charges of public offenses known to the court and likely to come before the grand jury.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a).

46-11-312. Powers and duties of grand jury. (1) When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room and inquire into the offenses cognizable by it. The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(2) If a member of a grand jury knows or has reason to believe that a public offense triable within the county has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.

(3) The grand jury may inquire into:

(a) the case of every person imprisoned in the jail of the county on a criminal charge and not indicted or against whom an information or complaint has not been filed;

(b) the condition and management of the public prisons within the county;

(c) the willful or corrupt misconduct in office of public officers of every description within the county.

(4) The grand jury is entitled to free access at all reasonable times to the public prisons and to the examination without charge of all public records within the county.

(5) If in the judgment of the grand jury the services of an expert are necessary, the grand jury may employ one or more at an agreed compensation to be first approved by the court. If in the judgment of the grand jury the services of assistants to such experts are required, the grand jury may employ such assistants at a compensation to be agreed upon and approved by the court.

History: **En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).**

46-11-313. Subpoena of witnesses. A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct.

History: **En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407.**

46-11-314. Reception of evidence. (1) In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or furnished by legal documentary evidence or the deposition of a witness in the cases mentioned in chapter 15, part 2, of this title.

(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.

History: **En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2).**

46-11-315. Advice and assistance to grand jury — who may be present. (1) The grand jury may at all times ask the advice of the court or the judge thereof, the attorney general, or the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(2) The county attorney or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.

(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators who shall investigate and present the evidence acquired in such investigation to the grand jury.

(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4).

46-11-316. Stenographer — transcript of testimony. (1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(3) The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5).

46-11-317. Secrecy of proceedings and disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the county attorney for use in the performance of his duty. Otherwise a juror, attorney, interpreter, stenographer, or operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury under 46-11-302(2). No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

History: En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409.

46-11-318. Discharging jury. When the grand jury certifies completion of business before it and the court concurs, it shall be discharged by the court.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part).

46-11-319. Expenses of grand jury. (1) All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county, except as provided in subsection (2), upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

(2) If a county has a district court fund, all expenses of a grand jury must be paid out of such fund.

(3) Subject to the procedures established under 3-5-902(1), the state shall reimburse the county for juror and witness fees as provided in 3-5-903 and for witness expenses as provided in 46-15-104. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

History: En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f); amd. Sec. 4, Ch. 66, L. 1985; amd. Sec. 12, Ch. 680, L. 1985.

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together, if unexplained or uncontradicted, would in its judgment warrant a conviction by a trial jury.

(2) An indictment cannot be found without the concurrence of at least eight grand jurors. When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury.

History: (1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a).

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be presented by their foreman in their presence to the court and must be filed with the clerk.

(2) When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

History: **En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b).**

46-11-333. Procedure regarding defendant. (1) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court unless the court orders otherwise.

(2) If the defendant is in custody or has given bail and eight jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

History: **En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).**

Part 4

The Charge

Part Cross-References

Joinder of charges — conspiracy, 45-4-102.

Alternate charges — attempt, 45-4-103.

46-11-401. Form of charge. (1) A charge shall:

(a) be in writing and in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) specify the name of the court in which the charge is filed; and

(c) charge the commission of an offense by:

(i) stating the name of the offense;

(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;

(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(iv) stating the time and place of the offense as definitely as can be done; and

(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

(2) If the charge is by information or indictment, it shall include endorsed thereon the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it shall be signed on oath by a person having knowledge of the facts or by the county attorney; if by information, it shall be signed by the county attorney or by his deputy; if by indictment, it shall be signed by the foreman of the grand jury.

History: **En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e).**

46-11-402. Record of charge — certified copy. If the charge is by information or indictment, it must be recorded by the clerk within 5 days after the same is filed in a book to be kept for that purpose. The judge must compare the record with the original indictment or information and certify the correctness thereof. In case the original is lost or destroyed, the defendant may be tried upon a copy taken from the record and certified by the clerk.

History: **En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).**

46-11-403. Amending the information. (1) (a) An information may be amended in matters of substance at any time not less than 5 days before trial with leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended.

(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

√ (3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.

History: **En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505; amd. Sec. 1, Ch. 62, L. 1981.**

46-11-404. Joinder and severance of offenses and defendants. (1) An indictment, information, or complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts. If two or more indictments, informations, or complaints are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, or complaint, and the defendant may be convicted of any number of the offenses charged. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count.

(3) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

History: **En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4).**

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged so that he may be a witness for the state.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, the court must order him to be discharged before the evidence is closed that he may be a witness for his codefendant.

History: **En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6).**

Part 5

Effect of Multiple Charges and Former Prosecutions

Part Cross-References

Rights of accused — double jeopardy, Art. II, sec. 25, Mont. Const.

46-11-501. Definitions. (1) The term "same transaction" includes conduct consisting of:

(a) a series of acts or omissions which are motivated by a purpose to accomplish a criminal objective and which are necessary or incidental to the accomplishment of that objective; or

(b) a series of acts or omissions which are motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or the property thereof.

(2) An offense is an "included offense" when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

History: **En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).**

46-11-502. Prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2).

46-11-503. When prosecution based on same transaction barred by former prosecution. If the offenses were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge and if the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(2) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:

(a) a judgment of conviction which has not been reversed or vacated;

(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before verdict. Termination under either of the following circumstances is not improper:

(a) The defendant consents to the termination or waives his right to object to the termination.

(b) The trial court, in the exercise of its discretion, finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or outside the courtroom makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3).

46-11-504. Former prosecution in another jurisdiction — when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(1) The first prosecution resulted in an acquittal or in a conviction as defined in 46-11-503 and the subsequent prosecution is based on an offense arising out of the same transaction.

(2) The former prosecution was terminated, after the complaint had been filed on a misdemeanor charge or after the information had been filed or the indictment found on a felony charge, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated; and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4).

46-11-505. When former prosecution not a bar. A prosecution is not a bar within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(2) The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.

(3) The former prosecution resulted in a judgment of conviction which was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5).

Part 6

Ensuring Availability of Material Witness Preserving Testimony

Part Cross-References

Detention of witnesses in criminal proceedings, Art. II, sec. 23, Mont. Const.

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204.

Cross-References

Depositions in criminal proceedings, Art. II, sec. 23, Mont. Const.

Clerk of District Court to keep witness book, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.

Witness from another state summoned to testify in this state, 46-15-113.

When depositions taken, 46-15-201.

Procedure for taking depositions, 46-15-202.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

46-12-101. Arraignment defined.
46-12-102. Place of arraignment.
46-12-103. Presence of defendant.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. General rules of procedure for arraignment.
46-12-202. Court to advise defendant of his rights and the charges.
46-12-203. Time allowed to answer.
46-12-204. The plea — plea bargains.
46-12-205. Record of arraignment.
46-12-206. Irregularity of arraignment.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

General Provisions

46-12-101. Arraignment defined. "Arraignment" is the formal act of calling the defendant into open court to answer the charge against him.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant shall be arraigned in the court in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602.

46-12-103. Presence of defendant. If the offense charged is a felony, the defendant must be personally present for arraignment. If the offense charged is a misdemeanor, he may appear by counsel.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603.

46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. General rules of procedure for arraignment. The arraignment in any court in this state must be conducted in the following manner:

(1) The arraignment must be in open court.

(2) The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

(3) The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c).

46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 1, Ch. 606, L. 1985.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

Cross-References

Defendant's right to reasonable time for preparation of trial after plea, 46-16-106.

46-12-204. The plea — plea bargains. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge

does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and

(iv) that the judge may impose any sentence allowed by law.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 2, Ch. 606, L. 1985.

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).

46-12-206. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

History: En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608.

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

46-13-101. Defenses and objections which may be raised before trial.
46-13-102. Defenses and objections which must be raised before trial.
46-13-103. Time of making motion.
46-13-104. Time of hearing motion.
46-13-105. If motion disallowed, plea to be entered.
46-13-106. Effect of order of dismissal.

Part 2 — Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial.
46-13-204. Transfer of trial.

Part 3 — Suppression of Evidence

46-13-301. Motion to suppress confession or admission.
46-13-302. Motion to suppress evidence illegally seized.

Chapter Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

Repeal of laws creating criminal offenses — when bar to prosecution, 1-2-205.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

Defendant's immunity from criminal prosecution — Revised Uniform Reciprocal Enforcement of Support Act (1968), 40-5-122.

Part 1

General Provisions

46-13-101. Defenses and objections which may be raised before trial. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief. The motion shall state with particularity the grounds therefor and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701.

46-13-102. Defenses and objections which must be raised before trial. Defenses and objections based on defects in the institution of the prosecution or in the complaint, indictment, or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only before trial by motion to dismiss or for other appropriate relief. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

46-13-103. Time of making motion. The motion provided for in 46-13-101 and 46-13-102 shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

46-13-104. Time of hearing motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705.

46-13-105. If motion disallowed, plea to be entered. If a motion is determined adversely to the defendant, he shall plead if he has not previously pleaded. A plea previously entered shall stand.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

46-13-106. Effect of order of dismissal. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom or, if admitted to bail, have his bail exonerated or money deposited instead of bail refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.

History: **En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2).**

Part 2

Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order a complaint, information, or indictment to be dismissed; however, the court may not order a dismissal of a complaint, information, or indictment, or a count contained therein, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History: **En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703; amd. Sec. 3, Ch. 606, L. 1985.**

Cross-References

Right to a speedy trial, Art. II, sec. 24, Mont. Const.

46-13-202. Motion for continuance. (1) The defendant or the state may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

History: **En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708.**

46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.

(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant

or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, it shall:

(a) transfer the cause to any other court of competent jurisdiction in any county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to insure that a fair trial may be had.

History: En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979; amd. Sec. 1, Ch. 556, L. 1981.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.

Part 3

Suppression of Evidence

46-13-301. Motion to suppress confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary. The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

(5) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(6) If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case.

History: En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805; amd. Sec. 1, Ch. 44, L. 1981.

46-13-302. Motion to suppress evidence illegally seized. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained. The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.

(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which if true show that the search and seizure were unlawful, the court shall conduct a hearing into the merits of the motion. The burden of proving that the search and seizure were unlawful shall be on the defendant.

(5) If the motion is granted, the evidence shall not be admissible against the movant at any trial of the case.

History: En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806.

Cross-References

Unreasonable search and seizure prohibited, Art. II, sec. 11, Mont. Const.

CHAPTER 14

MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment.
46-14-202. Psychiatric examination of defendant.
46-14-203. Report of the examination.
46-14-204 through 46-14-210 reserved.
46-14-211. Repealed.
46-14-212. Examination by expert chosen by state or defendant.
46-14-213. Psychiatric testimony upon trial.
46-14-214 through 46-14-220 reserved.
46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.
46-14-302. Discharge or release upon motion of superintendent.
46-14-303. Application for discharge or release by committed person.
46-14-304. Recommitment after conditional release.
46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.
46-14-313. Discharge of defendant from supervision.

Part 4 — Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.

History: En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979.

Cross-References

Voluntary act — material element of every offense, 45-2-202.

Criminal responsibility of person in intoxicated or drugged condition, 45-2-203.

Compulsion of threatened bodily injury, 45-2-212.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502.

46-14-103. Mental disease or defect excluding fitness to proceed. No person who, as a result of mental disease or defect, is unable to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment. (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979; amd. Sec. 1, Ch. 593, L. 1981.

Cross-References

Notice of certain defenses, 46-15-323.

46-14-202. Psychiatric examination of defendant. (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(4) The cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1).

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979; amd. Sec. 1, Ch. 616, L. 1981; amd. Sec. 2, Ch. 361, L. 1983; amd. Sec. 13, Ch. 680, L. 1985; amd. Sec. 1, Ch. 127, L. 1987.

Cross-References

Consideration of mental disease or defect in sentencing, 46-14-311.

46-14-203. Report of the examination. (1) The report of the examination shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant;

(c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; and

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979.

46-14-204 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(1).

46-14-212. Examination by expert chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist, licensed clinical psychologist, or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979; amd. Sec. 2, Ch. 127, L. 1987.

46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist or licensed clinical psychologist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist or licensed clinical psychologist was designated by the court or by the superintendent of the Montana state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist, licensed clinical psychologist, or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist, licensed clinical psychologist, or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979; amd. Sec. 3, Ch. 361, L. 1983; amd. Sec. 3, Ch. 127, L. 1987.

46-14-214 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel or by the county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the proceeding against him shall be dismissed, except as provided in subsection (4) of this section, and the county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as provided in 53-20-102(4), the proceeding against him shall be dismissed and the county attorney shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state and payable according to procedures established under 3-5-902(1).

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981; amd. Sec. 1, Ch. 352, L. 1983; amd. Sec. 14, Ch. 680, L. 1985; amd. Sec. 4, Ch. 127, L. 1987.

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979.

Part 3

Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1)

When a defendant is found not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(4) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979; amd. Sec. 2, Ch. 593, L. 1981; amd. Sec. 4, Ch. 361, L. 1983.

46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of the Montana state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two persons who are qualified psychiatrists or licensed clinical psychologists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists or licensed clinical

psychologists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303.

History: **En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979; amd. Sec. 5, Ch. 361, L. 1983; amd. Sec. 5, Ch. 127, L. 1987.**

46-14-303. Application for discharge or release by committed person. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of the Montana state hospital. However, an application by a committed person need not be considered until he has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for his release or discharge.

History: **En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5); amd. Sec. 6, Ch. 361, L. 1983.**

46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures prescribed in 46-14-302 and 46-14-303.

History: **En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979; amd. Sec. 7, Ch. 361, L. 1983.**

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

History: En. Sec. 10, Ch. 713, L. 1979.

Cross-References

Admissibility of statements made during examination or treatment, 46-14-401.

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: En. Sec. 11, Ch. 713, L. 1979; amd. Sec. 1, Ch. 267, L. 1987.

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312(2), the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: En. Sec. 12, Ch. 713, L. 1979.

Part 4

Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under 46-14-311, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt.

History: En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979.

Cross-References

Doctor-patient privilege, 26-1-805.

Psychologist-client privilege, 26-1-807.

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

46-15-101. Subpoenas.
46-15-102. Service of subpoenas.
46-15-103. Indigent defendants.
46-15-104. Expenses of witness.
46-15-105. Persons imprisoned in state prison or in another county.
46-15-106 through 46-15-110 reserved.
46-15-111. Definitions.
46-15-112. Summoning witness in this state to testify in another state.
46-15-113. Witness from another state summoned to testify in this state.
46-15-114. Exemption from arrest and service of process.

Part 2 — Depositions

46-15-201. When depositions taken.
46-15-202. Procedure for taking depositions — filing.
46-15-203. Additional requirements when initiated by state or witness.
46-15-204. Use of depositions at trial.

Part 3 — Discovery—Immunity for Witnesses

46-15-301. Repealed.
46-15-302. Repealed.
46-15-303. Repealed.
46-15-304 through 46-15-310 reserved.
46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.
46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.
46-15-313 through 46-15-320 reserved.
46-15-321. Definitions.
46-15-322. Disclosure by prosecution.
46-15-323. Disclosure by accused.
46-15-324. Materials not subject to disclosure.
46-15-325. Failure to call a witness or raise a defense.

46-15-326. Use of materials.
46-15-327. Continuing duty to disclose.
46-15-328. Excision and protective orders.
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Part 4 — Evidence in Cases Involving Sexual Offenses

46-15-401. When videotaped testimony admissible.
46-15-402. Procedure at videotaping.
46-15-403. Court order to protect privacy of victim.
46-15-404 through 46-15-410 reserved.
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Part 1

Subpoenas and Witnesses

Part Cross-References

Rights of accused — compulsory process, Art. II, sec. 24, Mont. Const.

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

District Court Clerk's duties — record of witnesses, 3-5-510.

District Court Clerk's duties — witness certificate, 3-5-511.

Sections granting immunity to witnesses, 5-5-105, 7-3-4365, 13-36-208, 25-14-106, 26-2-302, 33-1-316, 40-6-111, 69-14-113.

Witness fees, courts of record, 26-2-501.

Investigative subpoenas, Title 46, ch. 4, part 3.

46-15-101. Subpoenas. Upon the request of the prosecuting attorney or the defendant or his attorney, the court or the clerk of the court shall issue subpoenas. The subpoena shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony and produce objects and documents at the time and place specified therein.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a).

Cross-References

Right to process to compel attendance of witnesses, Art. II, sec. 24, Mont. Const.

Subpoena defined, 26-2-101.

Deposition of prospective witness, Title 46, ch. 15, part 2.

46-15-102. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer must serve in his county any subpoena delivered to him for service either on the part of the state or of the defendant.

(2) Service of a subpoena shall be made by delivering a copy thereof to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service must without delay make a written return of the service subscribed by him stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f).

Cross-References
Witness fees, Title 26, ch. 2, part 5.

46-15-103. Indigent defendants. When the defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b).

46-15-104. Expenses of witness. (1) When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

(2) According to procedures established by the department of commerce under 3-5-902(1), the clerk of district court shall submit to the department a detailed statement containing a list of witnesses and the amount of expenses paid to each by the county. Upon receipt and verification of the statement, the department shall promptly reimburse the designated county for all or a portion of the cost of witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c); amd. Sec. 15, Ch. 680, L. 1985; amd. Sec. 9, Ch. 1, Sp. L. 1985.

Cross-References
Mileage of witnesses, 2-18-503.
Witness fees — courts of record, 26-2-501.

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.

Cross-References
Securing testimony of witness who is a prisoner, Title 26, ch. 2, part 2.

46-15-106 through 46-15-110 reserved.

46-15-111. Definitions. (1) "Witness", as used in 46-15-112 through 46-15-114, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The word "state" shall include any territory of the United States and the District of Columbia.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.

46-15-112. Summoning witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing. The judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809.

Cross-References

Punishment for disobeying summons, 46-6-303.

46-15-113. Witness from another state summoned to testify in this state. (1) Whenever a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, it is prima facie proof of the desirability of such custody and delivery and the judge may direct that the witness be brought before him immediately. If the judge is satisfied as to the desirability of such custody and delivery, he may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold him unless and until he is released by bail, recognizance, or order of the judge issuing the certificate.

(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.

(4) A witness who has appeared in accordance with the provisions of the summons may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(5) If the witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810.

Cross-References

Punishment for failure of defendant to appear upon summons, 46-6-303.

46-15-114. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while returning therefrom, he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order.

History: En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811.

Cross-References

Witness protected from arrest when attending, going, and returning, 26-2-402.

Persons exempt from arrest, 46-6-102.

Part 2

Depositions

46-15-201. When depositions taken. (1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing or is or may become a nonresident of the state or is unwilling to provide relevant information to a requesting party and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the preliminary hearing or the filing of the indictment or the information, may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(2) If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a).

Cross-References

Detention for purpose of securing testimony, Art. II, sec. 23, Mont. Const.

Recognizance by or deposition of witness, 46-11-601.

46-15-202. Procedure for taking depositions — filing. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(2) A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(3) The court shall transmit the deposition to the clerk of the court making the order, there to be filed and held until the action shall come on for trial.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d).

Cross-References

How depositions taken, Rules 26, 28 through 32, M.R.Civ.P. (see Title 25, ch. 20).

46-15-203. Additional requirements when initiated by state or witness. The following additional requirements shall apply if the deposition is taken at the instance of the state or a witness:

(1) The officer having custody of a defendant shall be notified of the time and place set for examination and keep him in the presence of the witness during the examination.

(2) A defendant not in custody shall be given notice and shall have the right to be present at the examination.

(3) The state shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. (1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

(a) the witness is dead;

(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of sickness or infirmity; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(2) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.

History: **En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f).**

Cross-References

Objections to receiving deposition in evidence, Rules 30(c), 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Repealed. Sec. 11, Ch. 202, L. 1985.

History: **En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979; amd. Sec. 1, Ch. 557, L. 1981.**

46-15-302. Repealed. Sec. 11, Ch. 202, L. 1985.

History: **(1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.**

46-15-303. Repealed. Sec. 11, Ch. 202, L. 1985.

History: **En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.**

46-15-304 through 46-15-310 reserved.

46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.

46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.

46-15-313 through 46-15-320 reserved.

46-15-321. Definitions. As used in 46-15-321 through 46-15-329, unless the context requires otherwise, the following definitions apply:

(1) "Defendant" means the defense, including the accused, his counsel, and defense counsel's staff or investigators.

(2) "Make available for examination and reproduction" means to make material and information subject to disclosure available upon request at a designated place during specified reasonable times and provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make any other or additional arrangements.

(3) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a mechanical, electrical, or other recording of a person's oral communications or a transcript thereof; and

(c) a writing containing a verbatim record as a summary of a person's oral communications.

(4) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. Such notes may no longer themselves be considered a statement.

History: En. Sec. 1, Ch. 202, L. 1985.

46-15-322. Disclosure by prosecution. (1) Upon arraignment in district court or at such later time as the court may for good cause permit, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within his possession or control:

(a) a list of the names and addresses of all persons whom the prosecutor intends to call as witnesses in the case-in-chief, together with their relevant written or recorded statements;

(b) all written or oral statements of the accused and of any person who will be tried with him;

(c) the names and addresses of experts who have personally examined the accused or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons, including all written reports or statements made by them in connection with the particular case;

(d) a list or copies of all papers, documents, photographs, or tangible objects that the prosecutor will use at trial or that were obtained from or purportedly belong to the accused; and

(e) all material or information that tends to mitigate or negate the accused's guilt as to the offense charged or that would tend to reduce his punishment therefor.

(2) At the same time the prosecutor shall inform the defendant of and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the accused was a party;

(b) whether a search warrant has been executed in connection with the case;

(c) whether the case has involved an informant, and, if so, his identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of his staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion of the defendant showing that he has substantial need in the preparation of his case for additional material or information not otherwise provided for and that he is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to him. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at such later time as the court may for good cause permit, together with their relevant written or recorded statements, a list of the names and addresses of all persons whom he intends to call as rebuttal witnesses to the defenses of alibi, compulsion, entrapment, justifiable use of force, mistaken identity, or good character or the defense that the accused did not have a particular state of mind that is an element of the offense charged.

History: **En. Sec. 2, Ch. 202, L. 1985.**

46-15-323. Disclosure by accused. (1) At any time after the filing in district court of an indictment or information, the accused, in connection with the particular crime with which he is charged, shall upon written request of the prosecutor and for good cause shown:

(a) appear in a line-up;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable intrusions of his body;

(g) provide specimens of his handwriting; or

(h) submit to a reasonable physical or medical inspection of his body; however, such inspection does not include psychiatric or psychological examination.

(2) The accused is entitled to the presence of counsel at the taking of any evidence pursuant to subsection (1). Subsection (1) supplements and does not limit any other procedures established by law.

(3) Within 30 days after arraignment in district court or at such later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of his intention to introduce evidence at trial

of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the accused did not have a particular state of mind that is an essential element of the offense charged. The notice must specify for each defense the names and addresses of the persons that will be called as witnesses at trial in support of the defense. Prior to trial the defendant shall, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except for good cause shown. Any evidence that reasonably becomes available after the initial 30 days shall be admitted if 46-15-327 is complied with.

(4) Simultaneously with the notice of defenses submitted under subsection (3), the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names and addresses of all persons, other than the accused, whom he will call as witnesses at trial, together with all statements made by them in connection with the particular case;

(b) the names and addresses of experts whom he will call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by them in connection with the particular case; and

(c) a list of all papers, documents, photographs, and other tangible objects that he will use at trial.

(5) The defendant's obligation under this section extends to material and information within the possession or control of the defendant or his attorneys and agents.

(6) Upon motion of the prosecutor showing that he has substantial need in the preparation of his case for additional material or information not otherwise provided for, that he is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the accused's constitutional rights, the court in its discretion may order any person to make such material or information available to him. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

History: **En. Sec. 3, Ch. 202, L. 1985.**

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Notice of defense of mental disease or defect, 46-14-201.

46-15-324. Materials not subject to disclosure. (1) Except as provided in subsection (2), disclosure is not required for the work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the work product, that information must be disclosed.

(3) Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to his operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused.

History: **En. Sec. 4, Ch. 202, L. 1985.**

46-15-325. Failure to call a witness or raise a defense. The fact that a witness' name is on a list furnished pursuant to 46-15-321 through 46-15-329 or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows such comment after finding that the inclusion of the witness' name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown.

History: En. Sec. 5, Ch. 202, L. 1985.

46-15-326. Use of materials. Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to 46-15-321 through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

History: En. Sec. 6, Ch. 202, L. 1985.

46-15-327. Continuing duty to disclose. If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, such party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure.

History: En. Sec. 7, Ch. 202, L. 1985.

46-15-328. Excision and protective orders. (1) Upon a motion of any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by 46-15-321 through 46-15-329 be denied, deferred, or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under 46-15-321 through 46-15-329, it may authorize the party disclosing it to excise that portion of the material which is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit him to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when such presentation is made.

(4) If the court enters an order that any material or any portion thereof is not discoverable under 46-15-321 through 46-15-329, the entire text of the material must be sealed and preserved in the record in the event of an appeal.

History: En. Sec. 8, Ch. 202, L. 1985.

46-15-329. Sanctions. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of 46-15-321 through 46-15-329 or any order issued pursuant to 46-15-321 through 46-15-329, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;
(2) granting a continuance;
(3) holding a witness, party, or counsel in contempt;
(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or
(5) declaring a mistrial when necessary to prevent a miscarriage of justice.

History: En. Sec. 9, Ch. 202, L. 1985.

46-15-330 reserved.

46-15-331. Compelling testimony or production of evidence — immunity. Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807; amd. Sec. 4, Ch. 577, L. 1983; Sec. 46-15-311, MCA 1983; redes. 46-15-331 by Code Commissioner, 1985.

46-15-332. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4); Sec. 46-15-312, MCA 1983; redes. 46-15-332 by Code Commissioner, 1985.

Part 4

Evidence in Cases Involving Sexual Offenses

Part Cross-References

Provisions generally applicable to sexual crimes, 45-5-511.

46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 and for the prosecution of any offense arising from the same transaction, as defined in 46-11-501, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

History: **En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979; amd. Sec. 1, Ch. 8, L. 1983; amd. Sec. 1, Ch. 85, L. 1989.**

Compiler's Comments

1989 Amendment: Near beginning inserted clause relating to prosecution of offenses arising from same transaction.

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: **En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.**

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: **En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: **En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.**

Cross-References

Sexual intercourse without consent, 45-5-503.

CHAPTER 16

TRIAL IN DISTRICT COURT

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Part 1

General Provisions

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Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

County Attorney's records of criminal actions, 2-15-501, 7-4-2715.

Records of Attorney General, 2-15-501.

Courts and judicial officers, Title 3, ch. 1.

General rules governing procedure, Title 3, ch. 1, part 3.

Court actions permitted on nonjudicial days, 3-1-302.

District Courts, Title 3, ch. 5.
District Court records — criminal actions, 3-5-506.
District Court Clerk's duties — record of witnesses, 3-5-510.
Criminal contempt, 45-7-309.

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Right to jury trial — waiver. (1) Defendants in all criminal cases shall have a right to trial by jury not to exceed 12 in number. The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(2) Upon written consent of the parties, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d).

Cross-References
Rights of accused, Art. II, sec. 24, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Number of a trial jury, 3-15-106.
Trial juries in District Court, Title 3, ch. 15, part 5.
Jury trial of right, Rule 38, M.R.Civ.P. (see Title 25, ch. 20).
Selecting the jury, Title 46, ch. 16, part 3.

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury except that on a trial for criminal defamation the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102(2).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979.

Cross-References
Jury decides questions of law and fact in suits for libel and slander, Art. II, sec. 7, Mont. Const.
Province of court and jury, Title 26, ch. 1, part 2.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Failure of county attorney to attend. If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Presence of defendant — mistrial for absence. (1) The defendant must be personally present at the trial and rendition of judgment in all cases tried in the district court. If the defendant fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge and if after the exercise of reasonable diligence his presence cannot be procured, the court shall declare a mistrial and the cause may again be tried.

(2) In all cases appealed to the supreme court, it shall be conclusively deemed that the defendant was present in court at all stages of the trial unless the record on appeal affirmatively shows to the contrary.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

Cross-References

Right to appear and defend in person, Art. II, sec. 24, Mont. Const.

Part 2

Rules of Evidence for Criminal Cases

Part Cross-References

Rights of accused — self-incrimination, Art. II, sec. 25, Mont. Const.

Evidence, Title 26.

Nonapplicability of privileges — abused, neglected, and dependent children, 41-3-404.

Extrajudicial confession — evidence of death, 45-5-111.

Inference of mental state, 45-5-112.

Evidence in trial for rape, 45-5-503.

Evidence in trial for promoting prostitution, 45-5-602 through 45-5-604.

Evidence in trial for endangering welfare of children, 45-5-622.

Perjured testimony, 45-7-201.

Perjury and false swearing — evidence required for conviction, 45-7-201, 45-7-202.

Tampering with witnesses, 45-7-206.

Tampering with physical evidence, 45-7-207.

Evidence in prosecution for obscenity, 45-8-201.

Criminal defamation — evidence required for conviction, 45-8-212.

Presumptions — possession of machine gun, 45-8-305.

Evidence — possession of machine gun, 45-8-306.

Blood, breath, and urine tests as evidence — driving while intoxicated, 61-8-403, 61-8-404.

46-16-201. Applicability of civil rules. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001.

Cross-References

Evidence, Title 26.

Spousal privilege inapplicable in criminal action by one against the other, 26-1-802.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: **En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.**

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.

46-16-204 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: **En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.**

Cross-References

Competency of witnesses, Art. VI, Montana Rules of Evidence (see Title 26, ch. 10).

46-16-212. Competency of spouses. Except with the consent of both or in cases of criminal violence by one upon the other, abandonment or neglect of children by either party, or abandonment or neglect of one by the other, neither spouse is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

History: **En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011.**

Cross-References

Spousal privilege, 26-1-802.

46-16-213. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence which in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

History: **En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012.**

Part 3

Selecting the Jury

Part Cross-References

Trial jury defined, 3-15-104.

Number of trial jury — District Court, 3-15-106.

Jurors' fees, 3-15-201.

Duties of Clerk as to jurors, 3-15-204.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Jury lists, Title 3, ch. 15, part 4.

Summoning and impaneling the jury, Title 3, ch. 15, part 5.

Summoning the jury — District Court, 3-15-501.

Impaneling the jury — District Court, 3-15-509.

Right to jury trial, 46-16-102.

46-16-301. Formation of trial jury. (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least the number of jurors needed plus the total number of peremptory challenges.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a); amd. Sec. 5, Ch. 51, L. 1981; amd. Sec. 2, Ch. 92, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "shall be at least", substituted "the number of jurors needed" for "12".

Cross-References

Formation of the jury, Title 3, ch. 15, parts 3, 4, and 5; Title 25, ch. 7, part 2; Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

46-16-302. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least 5 days prior to the term for which the jury is drawn. For good cause shown, the court may entertain the motion at any time thereafter.

(2) The motion shall be in writing supported by affidavit and shall state facts which show that the jury panel was improperly selected or drawn.

(3) If the motion states facts which show that the jury panel has been improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908.

46-16-303. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when the names have been drawn.

(2) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3).

46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4); amd. Sec. 6, Ch. 51, L. 1981.

46-16-305. Peremptory challenges. Each defendant shall be allowed eight peremptory challenges in capital cases, six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight. The state shall be allowed the same number of peremptory challenges as all of the defendants. In a criminal case tried in the district court before a six-person jury, the state and all the defendants shall be allowed three peremptory challenges each. When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6).

46-16-306. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5).

46-16-307. Alternate jurors. (1) After the jury is impaneled and sworn, the court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7).

Part 4

Order of Trial

46-16-401. Order of trial. (1) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section.

(2) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence or may state his defense and then offer evidence in support thereof after the state rests.

(3) The parties may then respectively offer rebutting testimony only unless the court for good cause permits them to offer evidence upon their original case.

(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to.

It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.

(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.

(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910.

46-16-402. When order may be departed from. When the state of the pleading requires it or in any other case for good reasons and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911.

46-16-403. Evidence insufficient to go to jury. When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9).

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them or to do so himself on any subject connected with the trial, and to return them into court at the next meeting thereof.

(2) (a) The jury must also at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to them.

(b) In all cases appealed to the supreme court, it shall be conclusively deemed that the court or judge gave the proper admonition in accordance with the provision of subsection (2)(a) unless the record affirmatively shows to the contrary.

History: En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e).

46-16-502. View of relevant place or property. When the court deems it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view said place or personal property in the presence of the defendant and his counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same. The sheriff or bailiff must be sworn to suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912.

Cross-References

View by jury of premises, 25-7-401.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. When the jurors are brought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979.

Cross-References

Conduct of jury after case submitted to it, 25-7-403.

Jury's request for further information, 25-7-405.

46-16-504. Items which may be taken into the jury room. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and notes of the proceedings taken by themselves.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c).

Cross-References

Papers which may be taken into jury room, 25-7-404.

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914.

Part 6

Verdict — Disposition of Defendant

Part Cross-References

Treason — requirements for conviction, Art. II, sec. 30, Mont. Const.

Evidence sufficient for conviction — Alcoholic Beverage Code, 16-6-205.

Requirements for conviction — criminal defamation, 45-8-212.

46-16-601. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes. 95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901.

Cross-References

Instructions to jury on standard of proof to meet burden of persuasion, 26-1-403.

Disputable presumption of innocence, 26-1-602.

46-16-602. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902.

Cross-References

Instructions to jury on standard of proof required to meet burden of persuasion, 26-1-403.

46-16-603. Form of verdict. (1) The jury shall return a general verdict to each offense charged. The verdict must be unanimous in all criminal actions. The verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3).

Cross-References

Right to unanimous verdicts, Art. II, sec. 26, Mont. Const.

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Acquittal — when defendant discharged. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916.

Part 7

Motion for a New Trial

46-16-701. Definition and effect of a new trial. A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered. The granting of a new trial places the parties in the same position as if there had been no trial.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1).

Cross-References

Error in instruction as ground for new trial, 46-16-401.

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds therefor. It must be filed by the defendant within 30 days following a verdict or finding of guilty. Reasonable notice of the motion must be served on the state.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: **En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979.**

Cross-References

Scope of appeal by state, 46-20-103.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters—Justices' and City Courts

46-17-101. Initiation of proceedings — amending the complaint.
46-17-102. Record of proceedings.
46-17-103. Change of place of trial.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Trial by jury.
46-17-202. Formation of trial jury.
46-17-203. Plea of guilty.
46-17-204. Time to prepare for trial.
46-17-205. Presence of defendant.
46-17-206 through 46-17-210 reserved.
46-17-211. Verdict.

Part 3 — Procedure After Trial—Justices' and City Courts

46-17-301. Sentence and judgment.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.
46-17-305 through 46-17-310 reserved.
46-17-311. Appeal.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Chapter Cross-References

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Part 1

Preliminary Matters — Justices' and City Courts

Part Cross-References

Duty of police chief in regard to City Court, 7-32-4105.

46-17-101. Initiation of proceedings — amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001; amd. Sec. 2, Ch. 62, L. 1981.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Change of place of trial. (1) The defendant or prosecution may move before trial for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(2) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.

Part 2

The Trial — Justices' and City Courts

Part Cross-References

General rules governing proceedings, Title 3, ch. 1, part 3.

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jury fees — courts not of record, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

Witness fees — courts not of record, 26-2-503.

46-17-201. Trial by jury. (1) The defendant is entitled to a jury of six qualified persons, but the parties may agree to a number less than six.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1).

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005; amd. Sec. 18, Ch. 379, L. 1983.

Cross-References

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

46-17-203. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of the plea.

(2) A plea of guilty in a justices' court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice

or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2); amd. Sec. 3, Ch. 277, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) relating to waiver of trial de novo; and made minor changes in form and phraseology.

46-17-204. Time to prepare for trial. After the plea, the defendant is entitled to a reasonable time to prepare for trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Presence of defendant. The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Verdict. (1) The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter it or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together and the jury cannot agree upon a verdict as to all, the jury may render a verdict as to those in regard to whom it does agree. A judgment must be entered accordingly on the verdict, and the case as to the rest may be tried by another jury.

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Cross-References

Unanimous verdict required, Art. II, sec. 26, Mont. Const.

Part 3

Procedure After Trial — Justices' and City Courts

Part Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

46-17-301. Sentence and judgment. (1) If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the rendering of the verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence as provided in chapter 18, part 2, of this title. If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it considers advisable under the circumstances.

(4) The determination and imposition of sentence are the exclusive duty of the court.

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $25 of the fine. When the judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected, deducting his fees for the collection.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 1, Ch. 270, L. 1989.

Compiler's Comments

1989 Amendment: In (4), near end of first sentence, increased rate at which fine is paid off by imprisonment to $25 from $10 per day; and made minor changes in phraseology.

46-17-303. Deposit of fines. All fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 29, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal. (1) Except as provided in 46-17-203, all cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979; amd. Sec. 1, Ch. 333, L. 1985; amd. Sec. 4, Ch. 277, L. 1989.

Compiler's Comments

1989 Amendment: At beginning inserted exception clause.

Cross-References

Appellate jurisdiction of District Court, 3-5-303.

City Attorney to prosecute appeals to District Court, 3-11-301.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

46-18-101. Correctional policy.
46-18-102. Rendering judgment and pronouncing sentence.
46-18-103. Sentence to be imposed by judge.
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46-18-111. Presentence investigation.
46-18-112. Content of investigation.
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Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
46-18-204. Dismissal after deferred imposition.
46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
46-18-214 through 46-18-219 reserved.
46-18-220. Sentences for certain offenses committed in state prison — death penalty.
46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.
46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.
46-18-225 through 46-18-230 reserved.
46-18-231. Fines in felony and misdemeanor cases.
46-18-232. Payment of costs by defendant.
46-18-233. Fine or costs as a condition on suspended or deferred sentence.
46-18-234. When payment of fine or costs due.
46-18-235. Disposition of money collected as fines and costs.
46-18-236. Imposition of charge upon conviction or forfeiture — administration.
46-18-237 through 46-18-240 reserved.
46-18-241. Condition of restitution.
46-18-242. Investigation and report of victim's loss.
46-18-243. Definition.
46-18-244. Type and time of payment — defenses.
46-18-245. Supervision of payment.

46-18-246. Waiver or modification of payment.
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46-18-248. Rights of crime victims' compensation account.
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46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund.
46-18-251 through 46-18-253 reserved.
46-18-254. Release of sexual offender — duties of court and department.
46-18-255. Sentence upon conviction — restriction on employment.
46-18-256 through 46-18-260 reserved.
46-18-261. Recovery of suppression and investigation expenses for fires caused by arson.

Part 3 — Death Penalty

46-18-301. Hearing on imposition of death penalty.
46-18-302. Evidence that may be received.
46-18-303. Aggravating circumstances.
46-18-304. Mitigating circumstances.
46-18-305. Effect of aggravating and mitigating circumstances.
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46-18-307. Automatic review of sentence.
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46-18-401. Consecutive sentences.
46-18-402. Credit for time served.
46-18-403. Credit for incarceration prior to conviction.
46-18-404. Designation as nondangerous offender for purposes of parole eligibility.

Part 5 — Persistent Felony Offenders

46-18-501. Definition of persistent felony offender.
46-18-502. Sentencing of persistent felony offender.
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46-18-902. Interested judge not to act.
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46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 1

Policy and Preliminary Procedure

46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed; and

(iv) the criminal history of the offender.

(b) Dangerous offenders who habitually violate the law and victimize the public shall be removed from society and correctively treated in custody for long terms as needed. Other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

History: En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201; amd. Sec. 1, Ch. 533, L. 1983.

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his reasons for imposing the sentence.

History: En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202; amd. Sec. 1, Ch. 46, L. 1983.

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.

46-18-104 through 46-18-110 reserved.

46-18-111. Presentence investigation. No defendant convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified by professional experience. No defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense.

History: En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203; amd. Sec. 1, Ch. 173, L. 1985.

46-18-112. Content of investigation. Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer, on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

History: En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204.

46-18-113. Availability of report to defendant and others. (1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.

(2) Such reports shall be part of the record but shall be sealed and opened only on order of the court.

(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205.

Part 2

Form of Sentence

Part Cross-References

Excessive sanctions, cruel and unusual punishment, Art. II, sec. 22, Mont. Const.

Punishments allowed — military courts, 10-1-401.

Determination of what sentence may be imposed, 45-1-201.

Rehabilitation instead of prosecution for addicts, 45-9-202.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979; amd. Sec. 6, Ch. 198, L. 1981; amd. Sec. 1, Ch. 207, L. 1981; amd. Sec. 7, Ch. 415, L. 1981; amd. Sec. 1, Ch. 189, L. 1983; amd. Sec. 9, Ch. 581, L. 1983; amd. Sec. 1, Ch. 205, L. 1985; amd. Sec. 1, Ch. 524, L. 1985; amd. Sec. 104, Ch. 370, L. 1987; amd. Sec. 7, Ch. 610, L. 1987; amd. Sec. 1, Ch. 626, L. 1987; amd. Sec. 10, Ch. 293, L. 1989; amd. Sec. 2, Ch. 575, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 293 inserted (8) regarding registration of sexual offenders; inserted (9) requiring enrollment in sexual offender program by convicted sexual offenders; and made minor changes in punctuation. Amendment effective July 1, 1989.

Chapter 575 in (4) inserted reference to 45-9-101(5)(d); and made minor changes in grammar. Amendment effective April 20, 1989.

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall

impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979; amd. Sec. 10, Ch. 583, L. 1981; amd. Sec. 2, Ch. 392, L. 1987.

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Parole eligibility, 46-23-201.

Participation in furlough program, 46-23-411.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-203. Revocation of suspended or deferred sentence. (1) A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court.

(2) A petition seeking revocation of a suspended sentence or imposition of a sentence previously deferred must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of jurisdiction to rule on the petition.

(3) Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5); amd. Sec. 1, Ch. 328, L. 1981; amd. Sec. 1, Ch. 204, L. 1983.

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

History: En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207; amd. Sec. 1, Ch. 147, L. 1987; amd. Sec. 1, Ch. 463, L. 1989.

Compiler's Comments

1989 Amendment: Substituted second and third sentences relating to treatment of order of dismissal as confidential criminal justice information for former second and third sentences that read: "Upon dismissal of the charges, the court shall send an order directing the department of justice to expunge the defendant's record. The order must adequately identify the defendant, such as by sex, race, date of birth, and the current status of the charges to be expunged." Amendment effective April 6, 1989.

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: **En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.**

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: **En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).**

Cross-References

Classification of offenses, 45-1-201.
Definition of misdemeanor, 45-2-101.
Violation of Montana Elder Abuse Prevention Act misdemeanor, 53-5-525.

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison or may fine the offender in an amount not to exceed $50,000 or may impose both such fine and imprisonment.

History: **En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Classification of offenses, 45-1-201.
Definition of felony, 45-2-101.

46-18-214 through 46-18-219 reserved.

46-18-220. Sentences for certain offenses committed in state prison — death penalty. A person serving a sentence of imprisonment in the state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

History: **En. Sec. 1, Ch. 696, L. 1985.**

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

History: En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17; amd. Sec. 1, Ch. 108, L. 1981.

Cross-References

Sentencing of persistent felony offender, 46-18-502.

46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense.

History: En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981; amd. Sec. 2, Ch. 392, L. 1983; amd. Sec. 1, Ch. 532, L. 1983; amd. Sec. 105, Ch. 370, L. 1987.

Cross-References

Deliberate homicide, 45-5-102.

Mitigated deliberate homicide, 45-5-103.

Aggravated assault, 45-5-202.

Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Robbery, 45-5-401.
Sexual intercourse without consent, 45-5-503.
Criminal sale of dangerous drugs, 45-9-101.
Criminal possession of dangerous drugs, 45-9-102.
Criminal possession with intent to sell, 45-9-103.
Sentencing of persistent felony offender, 46-18-502.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.
Right to counsel, 46-8-101.
Court to advise defendant of rights, 46-12-202.
Right to counsel — parole hearing, 46-23-204.
Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

History: En. Sec. 1, Ch. 392, L. 1983.

46-18-225 through 46-18-230 reserved.

46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

History: En. Sec. 1, Ch. 198, L. 1981; amd. Sec. 106, Ch. 370, L. 1987; amd. Sec. 8, Ch. 610, L. 1987; amd. Sec. 3, Ch. 575, L. 1989.

Compiler's Comments

1989 Amendment: In (1) inserted reference to 45-9-101(5)(d). Amendment effective April 20, 1989.

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: **En. Sec. 3, Ch. 198, L. 1981.**

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: **En. Sec. 4, Ch. 198, L. 1981.**

46-18-235. Disposition of money collected as fines and costs. The money collected by a court, except money collected by a justice's court, as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state;

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

(3) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected, except for fines collected by a justice court and distributed pursuant to 3-10-601, must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 40-2-401.

History: **En. Sec. 5, Ch. 198, L. 1981; amd. Sec. 6, Ch. 180, L. 1983; amd. Sec. 16, Ch. 680, L. 1985; amd. Sec. 10, Ch. 1, Sp. L. 1985; amd. Sec. 1, Ch. 553, L. 1987; amd. Sec. 30, Ch. 557, L. 1987; amd. Sec. 59, Ch. 83, L. 1989.**

Compiler's Comments

1989 Amendment: In (2) substituted "drug forfeiture account" for "drug forfeiture fund".

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $10 for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries.

History: En. Sec. 1, Ch. 719, L. 1985; amd. Sec. 3, Ch. 17, Sp. L. June 1986; amd. Sec. 31, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Payment of salaries of county officials and assistants, 7-4-2502.

Salary schedule for certain county officers, 7-4-2503.

Amount of compensation for deputies and assistants, 7-4-2505.

Office of city attorney, Title 7, ch. 4, part 46.

46-18-237 through 46-18-240 reserved.

46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

(2) The court may require the offender to pay the cost of supervising the payment of restitution as provided in 46-18-245 by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

History: En. Sec. 1, Ch. 426, L. 1983; amd. Sec. 1, Ch. 490, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) relating to payment of cost of supervising the making of restitution.

Cross-References

Treatment of victims and witnesses, Title 46, ch. 24.

46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence or the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim.

(2) Where no presentence report is authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing.

History: En. Sec. 2, Ch. 426, L. 1983.

46-18-243. Definition. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "Victim" means:

(a) a person who suffers loss of property, bodily injury, or death as a result of:

(i) criminally injurious conduct; or

(ii) his good faith effort to prevent criminally injurious conduct;

(b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss.

History: En. Sec. 3, Ch. 426, L. 1983.

46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period for which the sentence has been suspended or deferred under 46-18-201.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that he could raise in a civil action for the loss sought to be compensated by the restitution order.

History: En. Sec. 4, Ch. 426, L. 1983.

46-18-245. Supervision of payment. The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment.

History: En. Sec. 5, Ch. 426, L. 1983.

46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period for which the sentence has been suspended or deferred under 46-18-201.

History: **En. Sec. 6, Ch. 426, L. 1983.**

46-18-247. Default. (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why he should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if he fails to appear as ordered, issue a warrant for his arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

History: **En. Sec. 7, Ch. 426, L. 1983.**

46-18-248. Rights of crime victims' compensation account. (1) Whenever a victim is paid from the crime victims' compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims' compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

History: **En. Sec. 8, Ch. 426, L. 1983.**

46-18-249. Civil actions by victim. (1) Sections 46-18-241 through 46-18-249 do not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

History: **En. Sec. 9, Ch. 426, L. 1983.**

46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund. (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Moneys in the county restitution fund that are due to a victim under this part must be paid to the crime victims compensation account, as defined in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation account may be made only from moneys paid by the offender who caused the injury or death that resulted in the payment from the account.

History: **En. Sec. 1, Ch. 545, L. 1989.**

46-18-251 through 46-18-253 reserved.

46-18-254. Release of sexual offender — duties of court and department. A sexual offender must be informed in writing at the time of sentencing of his duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which he is sentenced. The department shall obtain the address where the person expects to reside upon release or discharge or suspension of his sentence. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: **En. Sec. 3, Ch. 293, L. 1989.**

Compiler's Comments

Effective Date: Section 13, Ch. 293, L. 1989, provided: "[This act] is effective July 1, 1989."

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-255. Sentence upon conviction — restriction on employment. A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

History: En. Sec. 9, Ch. 293, L. 1989.

Compiler's Comments

Effective Date: Section 13, Ch. 293, L. 1989, provided: "[This act] is effective July 1, 1989."

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-256 through 46-18-260 reserved.

46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

History: En. Sec. 1, Ch. 447, L. 1989.

Part 3

Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: **En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.**

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

History: **En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8; amd. Sec. 2, Ch. 696, L. 1985; amd. Sec. 1, Ch. 387, L. 1987; amd. Sec. 1, Ch. 81, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (9) concerning deliberate homicide during course of sexual crime involving a minor.

Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact that exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: **En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.**

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: **En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.**

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

History: **En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.**

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Part 4

Factors That Reduce Sentence

46-18-401. Consecutive sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation may not be merged in any new sentence of commitment or probation.

(2) The court, whether or not it merges the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program,

the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.

History: En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979; amd. Sec. 11, Ch. 583, L. 1981; amd. Sec. 1, Ch. 76, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a), after "remaining term", substituted "may not" for "shall" and after "other term" deleted "except as provided in subsection (5)"; in (1)(b) substituted "may not" for "shall"; in (2), near beginning, substituted "whether or not it merges" for "merging" and near end substituted "any sentence that is merged" for "the sentences being merged"; in (4) substituted "must run consecutively" for "shall run concurrently"; and made minor change in punctuation.

Cross-References

Service of term for additional crime, 46-23-217.

46-18-402. Credit for time served. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense shall be allowed a credit of $25 for each day incarcerated prior to conviction, except that in no case shall the amount allowed or credited exceed the amount of the fine.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215; amd. Sec. 2, Ch. 270, L. 1989.

Compiler's Comments

1989 Amendment: In (2), near middle, increased rate at which fine is paid off by imprisonment to $25 from $10 per day; and made minor changes in phraseology.

46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) Except as provided in subsection (4), the sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for the offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is a dangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Except as provided in subsection (4), if the sentence and judgment do not contain a determination that the offender is a dangerous offender, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

(4) If an offender is given a probationary sentence that is subsequently revoked, the court may make the determination of whether the offender is a dangerous or nondangerous offender at the time of the revocation proceeding.

History: En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979; amd. Sec. 1, Ch. 106, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) inserted exception clause; in (3), in middle of first sentence, substituted "a dangerous offender" for "not eligible to be designated as a nondangerous offender" and in second sentence, at beginning, inserted exception clause and near middle inserted "that the offender is a dangerous offender"; inserted (4) allowing designation of dangerous or nondangerous offender at time of revocation of probation; and made changes in phraseology.

Retroactive Applicability: Section 2, Ch. 106, L. 1989, provided: "[This act] applies to revocation proceedings begun on or after [the effective date of this act] [effective October 1, 1989]. To this extent, [this act] applies retroactively, within the meaning of 1-2-109."

Cross-References

Prisoners eligible for parole, 46-23-201.

Duration of parole for nondangerous offender, 46-23-216.

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).

46-18-502. Sentencing of persistent felony offender. (1) Except as provided in subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981.

Cross-References

Prohibition on deferral of imposition of sentence, 46-18-201(5).

Additional sentence for offenses committed with a dangerous weapon, 46-18-221.

46-18-503. Procedural requirements if sentence to be imposed. (1) If the state seeks treatment of the accused as a persistent felony offender under 46-18-502, notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty.

(2) The notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions contained therein shall not be made public or in any manner be made known to the jury before the jury's verdict is returned upon the felony charge. However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in the Montana Rules of Evidence.

(3) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing. The court shall then fix a time for hearing with at least 3 days' notice to the accused.

(4) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of 46-18-502.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506.

Part 6

Procedure After Sentencing

Part Cross-References

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not paid to a justice's court or otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228; amd. Sec. 32, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-604. Transmittal of sentencing data to supreme court — compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

History: En. Sec. 1, Ch. 459, L. 1981.

Part 7

Jail Work Release Program

Part Cross-References

County jail work programs, 7-32-2225 through 7-32-2227.

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).**

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).**

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).**

Part 8

Effect of Conviction

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Treason — no forfeiture of property, Art. II, sec. 30, Mont. Const.

Sections affecting the right to vote, Art. IV, sec. 2, Mont. Const.; 13-1-111, 13-2-402, 20-20-301.

Sections creating loss of or ineligibility for office, Art. IV, sec. 4, Mont. Const.; 2-16-501, 3-1-1109, 3-1-1110, 3-15-303, 5-5-403, 7-4-2520, 13-36-209, 13-36-210, 70-30-207.

Sections relating to denial, revocation, or suspension of professional or occupational licenses, 15-30-302, 16-10-403, 20-4-110, 23-4-201, 30-10-201, 32-2-409, 33-17-507, 33-17-1001, 33-21-113, 33-30-313, 37-3-323, 37-4-321, 37-6-311, 37-7-311, 37-7-321, 37-8-441, 37-10-311, 37-11-321, 37-13-311, 37-14-321, 37-15-321, 37-16-411, 37-17-311, 37-18-311, 37-19-311, 37-30-502, 37-40-311, 37-43-311, 37-47-302, 37-47-341, 37-50-321, 37-51-321, 37-60-321, 37-61-301, 37-65-321, 37-66-321, 37-67-331, 39-5-203, 80-7-104.

Sections creating loss of or ineligibility for employment, 7-32-2104, 7-32-2107, 7-32-4160, 32-1-322, 32-1-462, 44-1-612.

Sections providing for loss of benefits, 10-2-403, 19-6-703, 19-7-703, 19-8-803, 72-2-104.

Sections creating civil liability, 20-3-332, 23-5-131, 37-51-323, 61-4-406, 75-2-413.

Sections creating forfeiture of money or property, 30-14-132, 33-21-113, 81-5-104, 81-5-111, 87-1-513.

Still competent to be a witness, Rules 601, 609, Montana Rules of Evidence (see Title 26, ch. 10).

Policy to minimize restrictions on or loss of licenses — encourage rehabilitation, Title 37, ch. 1, part 2.

Employment restrictions — sexual offenders, 46-18-255.

Registration of sexual offenders, Title 46, ch. 23, part 5.

Loss of driver's license, 61-5-205, 61-5-401.

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or

he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Additional restrictions on sentence, 46-18-202.

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part); amd. Sec. 1, Ch. 654, L. 1985.

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

46-19-101. Commitment of defendant.
46-19-102. Execution of a fine.
46-19-103. Execution of death sentence.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.

46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 4 — Interstate Corrections Compact

46-19-401. Compact adopted — text.
46-19-402. Effectuation of purposes of compact.

Part 1

Method of Execution

Part Cross-References

County jails, Title 7, ch. 32, part 22.

Escape from custody — use of force to prevent, 45-3-106.

Escape from custody — definition, 45-7-306.

Possession of weapon by prisoner, 45-8-318.

State prison, Title 53, ch. 30, part 1.

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.

46-19-102. Execution of a fine. (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained until the judgment is complied with. The imprisonment must not exceed 1 day for every $25 of the fine.

History: En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302; amd. Sec. 3, Ch. 270, L. 1989.

Compiler's Comments

1989 Amendment: In (2), in second sentence, increased rate at which fine is paid off by imprisonment to $25 from $10 per day; and made minor changes in phraseology.

Cross-References

Execution of a judgment, Title 25, ch. 13 and 14.

46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the warden of the state prison. The warrant must be directed to the warden and recite the conviction, judgment, method of execution, appointed date of execution, and the duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or his designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time, mode, and manner in which it was executed.

History: En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Sec. 1, Ch. 191, L. 1981; amd. Sec. 1, Ch. 292, L. 1983; amd. Sec. 4, Ch. 411, L. 1983; amd. Sec. 107, Ch. 370, L. 1987; amd. Sec. 1, Ch. 552, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence of (1) substituted "20" for "5"; inserted last sentence of (3) relating to time for choosing execution by lethal injection; inserted (4) relating to preparation, delivery, and contents of death warrant; in (5) substituted reference to subsection (6) for reference to subsection (5) and inserted last two sentences relating to anonymity of executioner and confidentiality of facts pertaining to his selection and training; and at beginning of (7) inserted "Within 20 days" and after "the warden shall" substituted "return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time, mode, and manner" for "make a return upon the death warrant showing time, mode, and manner". Amendment effective April 15, 1989.

Cross-References

Execution of death sentence justified, 45-3-109.

Definition of "dead", 50-22-101.

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305; amd. Sec. 8, Ch. 361, L. 1983; amd. Sec. 5, Ch. 411, L. 1983.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant.

History: En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307; amd. Sec. 6, Ch. 411, L. 1983; amd. Sec. 1, Ch. 551, L. 1989.

Compiler's Comments

1989 Amendment: In third sentence, before "warrant", substituted "a death" for "his"; and inserted last sentence relating to items that must be recited on the warrant.

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of

the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state

and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.

46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of institutions to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979.

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.

46-19-305. Hearings requested by other states. The board of pardons and the department of institutions shall hold such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311.

Part 4

Interstate Corrections Compact

46-19-401. Compact adopted — text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1987.

46-19-402. Effectuation of purposes of compact. The department of institutions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its jurisdiction, including but not limited to the making and submission of such reports as are required by the compact.

History: En. Sec. 2, Ch. 112, L. 1987.

CHAPTER 20

APPEALS

Part 1 — General Provisions

46-20-101. Single method of review in criminal cases.
46-20-102. Superseded.
46-20-103. Scope of appeal by state.
46-20-104. Scope of appeal by defendant.
46-20-105. Appeal by one codefendant.

Part 2 — Initiation of Appeal

46-20-201. Superseded.
46-20-202. Superseded.
46-20-203. Superseded.
46-20-204. Stay of execution and relief pending appeal.
46-20-205. Effect of an appeal by the state.

Part 3 — The Record on Appeal (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 4 — Briefs (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 5 — Motions and Papers in General (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 6 — Oral Argument (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 7 — Action by Court

46-20-701. Elements of record court considers on review — errors noticed.
46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.
46-20-703. Action reviewing court may take.
46-20-704. Superseded.
46-20-705. Superseded.
46-20-706. Termination of appeal — remand.
46-20-707. Discharge of defendant on reversal of judgment.

Chapter Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

Part 1

General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;
(b) modifying or changing the verdict as provided in 46-16-702(3)(c);
(c) granting a new trial;
(d) quashing an arrest or search warrant;
(e) suppressing evidence;
(f) suppressing a confession or admission;
(g) granting or denying change of venue; or
(h) imposing a sentence that is contrary to law.

History: En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403; amd. Sec. 1, Ch. 478, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2)(h) allowing appeal from order or judgment imposing sentence contrary to law. Amendment effective April 8, 1989.

Applicability: Section 3, Ch. 478, L. 1989, provided: "[This act] applies to all sentencing proceedings begun after [the effective date of this act]." Effective April 8, 1989.

Cross-References

Appeal by party other than state to District Court from Justices' or City Courts, 46-17-311.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment. Failure to make a timely objection during trial constitutes a waiver of the objection except as provided in 46-20-701(2).

History: En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404; amd. Sec. 1, Ch. 319, L. 1983.

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.

Part 2

Initiation of Appeal

Part Cross-References

Notice to Attorney General when department or board appeals, 46-1-302.

46-20-201. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.
History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).

46-20-202. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.
History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).

46-20-203. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.
History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.
History: En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.
History: En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.

Part 3

The Record on Appeal (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments
Histories of Superseded Sections:
46-20-301. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).
46-20-302. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b); amd. Sec. 1, Ch. 148, L. 1983.
46-20-303. En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.
46-20-304. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).
46-20-305. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).
46-20-306. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).
46-20-307 through 46-20-310 reserved.
46-20-311. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).
46-20-312. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).
46-20-313. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).
46-20-314. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).
46-20-315. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).
46-20-316. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).
46-20-317. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).
46-20-318. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.
46-20-319. En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.

Part 4

Briefs (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments
Histories of Superseded Sections:
46-20-401. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).

46-20-402. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).

46-20-403. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).

46-20-404. En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.

46-20-405. En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.

46-20-406. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).

46-20-407. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).

46-20-408. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).

46-20-409. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).

46-20-410. En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.

Part 5

Motions and Papers in General (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-501. En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

46-20-503. En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

46-20-504. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).

46-20-512. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).

46-20-513. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).

Part 6

Oral Argument (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-601. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).

46-20-602. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).

46-20-603. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).

46-20-604. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).

Part 7

Action by Court

46-20-701. Elements of record court considers on review — errors noticed. (1) Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant unless the record shows that the error was prejudicial.

(2) Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. No claim alleging an error affecting jurisdictional or constitutional rights may be noticed on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the defendant establishes that the error was prejudicial as to his guilt or punishment and that:

(a) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(b) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the defendant or his attorney that prevented the claim from being raised and disposed of; or

(c) material and controlling facts upon which the claim is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence.

History: **(1)En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412; (2)En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425; amd. Sec. 2, Ch. 319, L. 1983; Sec. 46-20-702, MCA 1985; redes. 46-20-701(2) by Code Commissioner, 1987.**

46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: **En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.**

46-20-704. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: **En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.**

46-20-705. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: **En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423; amd. Sec. 1, Ch. 294, L. 1981.**

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: **En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.**

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;
(2) if he is on bail, direct that his bail be exonerated; or
(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

46-21-101. Circumstances in which validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. What grounds for relief waived if not raised.

Part 2 — Action of Court

46-21-201. Proceedings on the petition.
46-21-202. Record must be kept.
46-21-203. Review.

Part 1

Initiating Proceedings

46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

History: En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601; amd. Sec. 1, Ch. 195, L. 1981; amd. Sec. 1, Ch. 211, L. 1985.

46-21-102. When petition may be filed. A petition for such relief may be filed at any time within 5 years of the date of the conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604; amd. Sec. 2, Ch. 195, L. 1981.

46-21-103. Commencement of proceedings. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place or the clerk of the supreme court a verified petition. The clerk shall docket the petition upon its receipt and bring the same promptly to the attention of the court.

History: **En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602.**

46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. The petition must be accompanied by a supporting memorandum including appropriate arguments and citations and discussion of authorities.

History: **En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603; amd. Sec. 3, Ch. 195, L. 1981.**

46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition.

History: **En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607; amd. Sec. 4, Ch. 195, L. 1981.**

Part 2

Action of Court

46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: **En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605; amd. Sec. 5, Ch. 195, L. 1981.**

46-21-202. Record must be kept. A court which entertains a petition pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606.

46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within 60 days of the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608; amd. Sec. 6, Ch. 195, L. 1981.

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

46-22-101. Who may prosecute writ.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ.
46-22-202. By whom issued and before whom returnable.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Contents of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Contents of return.
46-22-302. Production of person — exception for infirmity or illness.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence — depositions.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by state.

Chapter Cross-References

Right of habeas corpus, Art. II, sec. 19, Mont. Const.

Part 1

Availability of Writ

46-22-101. Who may prosecute writ. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal; nor is relief under this chapter available to attack the legality of an order revoking a suspended or deferred sentence. Relief for such purposes is limited to the provisions of Title 46, chapter 21.

History: En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701; amd. Sec. 7, Ch. 195, L. 1981; amd. Sec. 2, Ch. 211, L. 1985.

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting his substantial rights.

History: En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716.

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.

Part 2

Issuance of Writ

46-22-201. Application for writ. (1) Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. It must specify:

(a) that the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty;

(b) why the imprisonment or restraint is unlawful;

(c) the place where and the officer or person by whom he is so confined or restrained.

(2) All the parties must be named if they are known or described if they are not known.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979.

46-22-202. By whom issued and before whom returnable. The writ of habeas corpus may be granted:

(1) by the supreme court or any justice thereof upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any justice thereof or before any district court or judge thereof.

(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county.

History: En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979.

Cross-References

Individual power of Supreme Court Justices to issue Writs of Habeas Corpus, 3-2-212.

District Court may issue and determine at chambers, 3-5-311, 3-5-312.

46-22-203. Writ granted without delay. Any court or judge authorized to grant the writ to whom a petition therefor is presented must, if it appears that the writ ought to issue, grant the same without delay.

History: En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705.

46-22-204. Writ and process may issue at any time. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715.

Cross-References

Court actions permitted on nonjudicial days, 3-1-302.

46-22-205. Contents of writ. (1) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the court or judge before whom the writ is returnable at a time and place therein specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issue or issues to be determined upon return of the writ are not stated therein or in an order attached thereto, then a copy of the petition must be attached to the writ.

History: En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707.

46-22-206. Service of writ. (1) The writ must be served upon the person to whom it is directed. If the person to whom the writ is directed represents a state institution, a copy of the writ shall be served upon the attorney general. If such person represents a county institution, a copy of the writ shall be served upon the county attorney.

(2) The writ shall be served by the clerk of court, the sheriff, or any other officer directed to do so by the court.

(3) The writ shall be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the court or judge.

History: En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708.

Cross-References

Procedure for service of summons and writ, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Contents of return. (1) The person upon whom the writ is served must make a return and state in his return:

(a) whether he has the party in his custody or under his power or restraint;

(b) if he has the party in his custody or under his power or restraint, the authority for and cause of such custody or restraint; if the detention is by legal process, a copy thereof must be annexed to the response;

(c) if he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ but has transferred such custody or restraint to another, particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.

(2) The return must be signed by the person making the same and, except when such person is a sworn public officer and makes such return in his official capacity, it must be verified by his oath.

History: **En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709.**

46-22-302. Production of person — exception for infirmity or illness. The person commanded by the writ shall bring the detained person according to the command of the writ unless it is made to appear by affidavit that because of sickness or infirmity such person cannot be brought before the judge without danger to his health. If the judge is satisfied with the truth of the affidavit, he may proceed and dispose of the case as if the party had been produced or the hearing may be postponed until the party can be present.

History: **En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710.**

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, he shall be adjudged in contempt of court.

History: **En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

46-22-304. Hearing on return. (1) The court or judge before whom the writ is returned must immediately after the return proceed to hear and examine the return.

(2) The hearing on the writ may be summary in nature.

History: **En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711.**

46-22-305. Production of evidence — depositions. Evidence may be produced and compelled as in civil actions. Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ.

History: **En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712.**

Cross-References

Procedure for acquiring evidence, Rules 26, 28 through 37, M.R.Civ.P. (see Title 25, ch. 20).

46-22-306. Disposition of petitioner. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: **En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713.**

46-22-307. Appeal by state. An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal. The appeal shall be taken in the same manner as in civil actions.

History: En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714.

Cross-References

Procedure for appeal to Supreme Court, Title 25, ch. 12; Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

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46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms.
46-23-1103. Arranging for sending state to retake or reincarcerate violator.
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Chapter Cross-References

Effect of executive reorganization, 2-15-131 through 2-15-137.

Jail work release program, Title 46, ch. 18, part 7.

Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department of institutions.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205.

46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly, and at such other times as the board considers necessary, at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204; amd. Sec. 1, Ch. 234, L. 1981; amd. Sec. 1, Ch. 300, L. 1987.

Cross-References

Board of Pardons established, 2-15-2302.

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

46-23-106. Information from courts to board. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210.

46-23-107. Orders of board — reviewability. Decisions of the board must be by majority vote. The orders of the board are not reviewable.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1); amd. Sec. 1, Ch. 188, L. 1989.

Compiler's Comments

1989 Amendment: At end of last sentence deleted "except as to compliance with the terms of parts 1, 2, 3, and 10 of this chapter"; and made minor change in style. Amendment effective March 20, 1989.

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Criminal justice information, Title 44, ch. 5.

Disclosure of criminal justice information, 44-5-104.

Part 2
Granting of Parole

46-23-201. Prisoners eligible for parole. (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(3) A convict serving a life sentence may not be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(4) A parole may be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(5) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) and (3).

(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (5) do not apply.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2); amd. Secs. 1, 2, Ch. 235, L. 1983; amd. Sec. 1, Ch. 451, L. 1985; amd. Sec. 2, Ch. 188, L. 1989.

Compiler's Comments

1989 Amendment: In (1), near beginning, substituted "Subject to the restrictions contained in subsections (2) through (4), the board may" for "Subject to the following restrictions, the board shall"; in (4), in two places, substituted "may" for "shall"; changed internal references; and made minor changes in outline form, style, and grammar. Amendment effective March 20, 1989.

46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to his official parole eligibility date, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3); amd. Sec. 1, Ch. 45, L. 1983.

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.

46-23-204. All persons may be heard — counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board, and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-208 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that he obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant him a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on such furlough, the prisoner remains

in the legal custody of the prison and is subject to all other conditions recited by the board.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(4); amd. Sec. 1, Ch. 1, Sp. L. 1982; amd. Sec. 3, Ch. 392, L. 1987.

46-23-216. Duration of parole. (1) A prisoner on parole who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: (1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222.

Cross-References

Designation as nondangerous offender for purposes of parole eligibility, 46-18-404.

46-23-217. Service of term for additional crime. A prisoner who commits a crime while imprisoned in the state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence as provided in 46-18-401. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence as provided in 46-18-401.

History: En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979; amd. Sec. 3, Ch. 188, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence substituted "while imprisoned in the state prison or while released on parole or under the supervised release program" for "while at large on parole or conditional release"; inserted last two sentences relating to parole for original sentence; and made minor changes in phraseology. Amendment effective March 20, 1989.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Executive Clemency

Part Cross-References
Pardons, Art. VI, sec. 12, Mont. Const.

46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor towards a convicted person. The governor may grant clemency in the form of:

(i) the remission of fines or forfeitures;

(ii) the commutation of a sentence to one which is less severe;

(iii) respite; or

(iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before he files an application for clemency. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. Applications may be filed only by the person convicted of the crime, by his attorney acting on his behalf and with his consent, or by a court-appointed next friend, guardian, or conservator acting on his behalf. The board shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; and

(b) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) The board shall advise the governor and recommend action to be taken. The board may recommend that clemency be granted or denied. In noncapital cases, if the board recommends that clemency be denied, the application must not be forwarded to the governor and the governor may not take action on the case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the board, but he shall review the record of the hearing and the board's recommendation before he grants or denies clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to him.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223; amd. Sec. 1, Ch. 561, L. 1989.

Compiler's Comments
1989 Amendment: Inserted (1)(a) defining clemency; inserted (1)(b) defining pardon; and substituted (2) and (3) relating to procedure for applying for clemency for former language that read: "The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall

advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted and as to the individual circumstances relating to social conditions of the applicant. If the board or a majority thereof approves such application for executive clemency, it shall advise the governor and recommend action to be taken." Amendment effective April 15, 1989.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a hearing, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224; amd. Sec. 2, Ch. 561, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning substituted "hearing" for "recommendation of executive clemency to the governor"; in third paragraph, after "pardon", deleted "or reprieve"; and made minor change in phraseology. Amendment effective April 15, 1989.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the applicant.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225; amd. Sec. 3, Ch. 561, L. 1989.

Compiler's Comments

1989 Amendment: At end substituted "applicant" for "petitioner and the convict". Amendment effective April 15, 1989.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229; amd. Sec. 4, Ch. 561, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning substituted "capital case or in noncapital cases where the decision is made to recommend clemency be granted" for "case". Amendment effective April 15, 1989.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite — application. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper. The governor may grant a respite upon application of a person authorized to apply for executive clemency and prior to any review or recommendation by the board of pardons. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of postponing the execution of the warrant. In such a case, if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230; amd. Sec. 5, Ch. 561, L. 1989.

Compiler's Comments

1989 Amendment: Inserted second, third, fourth, and fifth sentences relating to the procedure for granting respites. Amendment effective April 15, 1989.

46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231; amd. Sec. 6, Ch. 561, L. 1989.

Compiler's Comments

1989 Amendment: In two places substituted "respite" for "reprieve". Amendment effective April 15, 1989.

Part 4

Supervised Release Program

46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(6) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(7) "Supervising agent" means a probation and parole officer of the department.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218; amd. Sec. 1, Ch. 583, L. 1981.

46-23-402 through 46-23-404. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-402. En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department is authorized and directed to establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the above programs;
(3) approval of the sponsor;
(4) review of a board decision to deny an applicant admittance into the program;
(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;
(6) conducting revocation hearings;
(7) establishment of a program by the prisoner; and
(8) any other provisions necessary to implement this part.

History: **En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979; amd. Sec. 2, Ch. 583, L. 1981.**

46-23-406. Repealed. Sec. 13, Ch. 583, L. 1981.

History: **En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).**

46-23-407 through 46-23-410 reserved.

46-23-411. Application to participate — eligibility. (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 24 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

History: **En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979; amd. Sec. 3, Ch. 583, L. 1981; amd. Sec. 1, Ch. 445, L. 1989.**

Compiler's Comments

1989 Amendment: In (1) increased the number of months to 24 from 15.

Applicability: Section 3, Ch. 445, L. 1989, provided: "[This act] applies to persons incarcerated at the time of or after the effective date of [this act]." Effective October 1, 1989.

46-23-412. Board's action on application. The board shall approve or deny the application of each prisoner after careful study of the prisoner's release plans, criminal history, and all other pertinent case material. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.

History: **En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5); amd. Sec. 4, Ch. 583, L. 1981.**

46-23-413 through 46-23-415. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-413. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).

46-23-414. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).

46-23-415. En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agent. The department shall be responsible for the activities of a prisoner participating in a supervised release program under this part. The department may delegate jurisdictional supervision to a supervising agent who shall be responsible for the activities of the prisoner during his supervised release.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1); amd. Sec. 5, Ch. 583, L. 1981.

Cross-References

Per diem payments for residential correctional programs, 53-1-501.

46-23-422. Violation of supervised release program by prisoner — revocation. (1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(2) The prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the supervised release conditions occurred. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the department. The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981.

Part 5

Registration of Sexual Offenders

Part Compiler's Comments

Effective Date: Section 13, Ch. 293, L. 1989, provided: "[This act] is effective July 1, 1989."

Part Cross-References

Duties of Court and Department upon release of sexual offender, 46-18-254.

Employment restrictions — sexual offenders, 46-18-255.

46-23-501. Short title. Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual Offender Registration Act".

History: **En. Sec. 1, Ch. 293, L. 1989.**

46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

History: **En. Sec. 2, Ch. 293, L. 1989.**

46-23-503. Release of sexual offender from place of confinement — duties of official in charge. A sexual offender who is released from the custody of the department of institutions or the department of family services must be informed in writing prior to release of his duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address where the person expects to reside upon his release and report the address to the department of institutions. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: **En. Sec. 4, Ch. 293, L. 1989.**

46-23-504. Duty to register. A sexual offender shall, within 14 days of coming into a county in which he resides or is temporarily domiciled, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

History: **En. Sec. 5, Ch. 293, L. 1989.**

46-23-505. Change of address — duty to inform. If a person required to register under 46-18-254, 46-18-255, and this part changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department and the local law enforcement agency having jurisdiction over the new place of residence.

History: **En. Sec. 6, Ch. 293, L. 1989.**

46-23-506. Duration of registration. (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison.

(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.

History: **En. Sec. 7, Ch. 293, L. 1989.**

46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $250, or both.

History: **En. Sec. 8, Ch. 293, L. 1989.**

Parts 6 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: **En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301.**

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302; amd. Sec. 1, Ch. 639, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) relating to authorization for parole and probation officers to carry firearms. Amendment effective July 1, 1989.

46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers shall have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1; amd. Sec. 2, Ch. 544, L. 1987.

46-23-1004. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303.

46-23-1005 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer, who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of his sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society.

(b) Nothing in subsection (6)(a) prohibits a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

History: En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304; amd. Sec. 1, Ch. 195, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (6) regarding conditional discharge; and made minor change in punctuation.

Applicability: Section 4, Ch. 195, L. 1989, provided: "[This act] applies to persons under probation or parole supervision on or after [the effective date of this act]." Effective October 1, 1989.

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of his sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society.

(b) Nothing in subsection (6)(a) prohibits the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306; amd. Sec. 2, Ch. 195, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (6) regarding conditional discharge.

Applicability: Section 4, Ch. 195, L. 1989, provided: "[This act] applies to persons under probation or parole supervision on or after [the effective date of this act]." Effective October 1, 1989.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing shall be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as provided in 46-23-1025.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2).

Cross-References

Furlough violation — on-site hearing for parole revocation, 46-23-422.

46-23-1025. Report to and action by the board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report shall be accompanied by the findings of the hearings officer.

(2) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(3) If it appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it will be counted as time served under the sentence.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3).

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

Part 11

Interstate Supervision of Probation and Parole

Part Cross-References

Duty of Department of Institutions to administer interstate compact, 46-23-1004.

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.

Cross-References

Extradition — violation of subdivision laws, 76-4-1246.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or

parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer

involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: **En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.**

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: **En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.**

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: **En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.**

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: **En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.**

CHAPTER 24

TREATMENT OF VICTIMS AND WITNESSES

Part 1 — General Provisions

46-24-101. Purpose.
46-24-102. Training in victim assistance.
46-24-103. Duty of attorney general.

46-24-104. Consultation with victim of felony offense.
46-24-105. No cause of action for damages.

Part 2 — Services to Victim, Witness

46-24-201. Services to victims of crime.
46-24-202. Notification of available protective services.
46-24-203. Prompt notification to victims and witnesses of felony offenses.
46-24-204. Scheduling changes.
46-24-205. Notification to employer or creditor.
46-24-206. Property return.

Chapter Cross-References

Crimes, Title 45.

Witnesses, Title 46, ch. 15, part 1.

Crime Victims Compensation Act, Title 53, ch. 9.

Part 1

General Provisions

46-24-101. Purpose. The legislature declares that the purposes of this chapter are to:

(1) protect the role of crime victims and witnesses in the criminal justice process;

(2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and

(3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

History: En. Sec. 1, Ch. 554, L. 1985.

Cross-References

Statutory provisions on evidence — "witness" defined, 26-1-101.

Crimes — general principles of liability — "witness" defined, 45-2-101.

46-24-102. Training in victim assistance. The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

History: En. Sec. 9, Ch. 554, L. 1985.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

46-24-103. Duty of attorney general. The attorney general shall assure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. In addition, the attorney general shall assure that victims and witnesses are provided important services and assistance as required under this chapter.

History: En. Sec. 10, Ch. 554, L. 1985.

Cross-References

Attorney General — general duties, 2-15-501.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-104. Consultation with victim of felony offense. The prosecuting attorney in a criminal case shall consult with the victim of a felony offense or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his family regarding the disposition of the case, including:

(1) dismissal of the case;
(2) release of the accused pending judicial proceedings;
(3) plea negotiations; and
(4) pretrial diversion of the case from the judicial process.

History: En. Sec. 6, Ch. 554, L. 1985.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-105. No cause of action for damages. Nothing in this chapter may be construed to create a cause of action for damages against the state or one of its political subdivisions.

History: En. Sec. 11, Ch. 554, L. 1985.

Cross-References

Governmental entity — liability exposure and insurance coverage, Title 2, ch. 9.

Part 2

Services to Victim, Witness

46-24-201. Services to victims of crime. Law enforcement personnel shall assure that a victim of a crime receives emergency social and medical services as soon as possible and that such victim is given information on the following:

(1) the availability of crime victim compensation;

(2) community-based victim treatment programs;

(3) the role of the victim in the criminal justice process, including what he can expect from the system, as well as what the system expects from the victim; and

(4) stages in the criminal justice process of significance to a crime victim and the manner in which information about such stages may be obtained.

History: En. Sec. 2, Ch. 554, L. 1985.

Cross-References

Child abuse, neglect, and dependency — protective care, Title 41, ch. 3, part 3.

Restitution to victims, 46-18-241 through 46-18-249.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-202. Notification of available protective services. Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation.

History: En. Sec. 3, Ch. 554, L. 1985.

Cross-References

Protection of witnesses, Title 26, ch. 2, part 4.

Detaining witnesses — criminal — material witness, 46-11-601.

46-24-203. Prompt notification to victims and witnesses of felony offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to his case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings; and

(c) proceedings in the prosecution of the accused, including entry of a plea of guilty, the setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense, a relative of such a victim or witness who is a minor, or a relative of a homicide victim.

History: En. Sec. 5, Ch. 554, L. 1985.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

History: En. Sec. 4, Ch. 554, L. 1985.

46-24-205. Notification to employer or creditor. (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from his place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. Such agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for such serious financial strain.

History: En. Sec. 8, Ch. 554, L. 1985.

46-24-206. Property return. A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

History: En. Sec. 7, Ch. 554, L. 1985.

Cross-References

Disposition of property of deceased, 7-4-2917.

Custody and disposition of items seized by peace officer without search warrant, 46-5-303.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

Part 1 — General Provisions

46-30-101. Definitions.
46-30-102. Nonwaiver by this state.

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Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.

Part 2

Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: **En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).**

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: **En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.**

Cross-References

This section as exception to commitment to await requisition, 46-30-302.

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: **En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.**

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: **En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.**

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.

Cross-References

Assisting a peace officer in making an arrest, 45-7-304, 46-6-402.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-202.

Right to counsel — sentencing hearing, 46-18-223.

Habeas corpus, Title 46, ch. 22.

Right to counsel — probation hearing, 46-23-204.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.

46-30-229. Prior waiver of extradition. (1) A person who is alleged to have violated the terms of his bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person, or an order from the other state releasing the person on the condition that he waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of his release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of his right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for him to apply for a writ of habeas corpus before he may be released to agents from the other state.

History: **En. Sec. 1, Ch. 392, L. 1987.**

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter his answer shall be heard as if he had been arrested on a warrant.

History: **En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114; amd. Sec. 17, Ch. 79, L. 1983.**

Cross-References

Manner of arrest without warrant, 46-6-106.

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: **En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.**

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.

Cross-References

Bail, Title 46, ch. 9.

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Cross-References

Recovery by state on forfeited bond, 46-9-503, 46-9-504.

Part 4

Extradition to This State From Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the

county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123; amd. Sec. 172, Ch. 575, L. 1981.

Cross-References

Extradition of persons who left demanding state involuntarily, 46-30-203.

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: **En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.**

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: **En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.**

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: **(1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.**

Cross-References

Mileage allowed when private vehicle used, 2-18-503.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: **En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.**

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: **En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.**

Cross-References

When no penalty is specified, 46-18-212.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

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46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

Part 2 — Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement.
46-31-202. Warden to give over inmate.
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46-31-204. Penalty for escape from custody on detainer.

Chapter Cross-References

Extradition of persons held in another state, 46-30-403.

Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article

III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any

escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131; amd. Sec. 1, Ch. 346, L. 1985.

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed $50,000, or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134; amd. Sec. 7, Ch. 198, L. 1981.

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of electors as compared to nonelectors.
49-1-204. Rights and duties of citizens of other states.

Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Equal protection — prohibition on discrimination, Art. II, sec. 4, Mont. Const.; Amend. 14, U.S. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.; 39-31-204.

Freedom of assembly, Art. II, sec. 6, Mont. Const.

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

Right to bear arms, Art. II, sec. 12, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Access to courts, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.; Amend. 14, U.S. Const.

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Unenumerated rights, Art. II, sec. 34, Mont. Const.; Amend. 9, U.S. Const.

Freedom of religion, speech, press, assembly, and petition, Amend. 1, U.S. Const.

Double jeopardy, self-incrimination, and due process of law, Amend. 5, U.S. Const.

State Coordinator of Indian Affairs, 2-15-1813, 90-11-101, 90-11-102.

Rights and obligations of minors, Title 41, ch. 1.

"Baby Jane Doe law" — right of infants to medical treatment, 41-3-102 (see definitions of "adequate health care" and "withholding of medically indicated treatment").

Effect of former status as mental patient, 53-21-189.

Part 1

Basic Personal Rights

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Search and seizure, Art. II, sec. 11, Mont. Const.; Amend. 4, U.S. Const.; Title 46, ch. 5.

Quartering soldiers, Art. II, sec. 32, Mont. Const.; Amend. 3, U.S. Const.
Husband and wife, Title 40, ch. 2.
Right to die with dignity, Title 50, ch. 9.
Rights of nonsmokers, Title 50, ch. 40.
Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: **En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.**

Cross-References
Habeas corpus, Art. II, sec. 19, Mont. Const.
Bail, Art. II, sec. 21, Mont. Const.; Amend. 8, U.S. Const.
Excessive sanctions, Art. II, sec. 22, Mont. Const.; Amend. 8, U.S. Const.
Detention to secure testimony, Art. II, sec. 23, Mont. Const.
Rights of the accused, Art. II, sec. 24, Mont. Const.; Amend. 6, U.S. Const.
Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Imprisonment for debt, Art. II, sec. 27, Mont. Const.
Habeas corpus, bill of attainder and ex post facto, Art. I, sec. 9, U.S. Const.
Slavery, Amend. 13, U.S. Const.
Limit on rights, 1-3-205.
Consent, 1-3-206.
Remedy, 1-3-214.
Voter information pamphlet — rejection of defamatory matter, 13-27-408.
Code of Fair Campaign Practices, Title 13, ch. 35, part 3.
Availability of remedies — liability, Title 27, ch. 1.
Abolition of certain causes of action, Title 27, ch. 1, part 6.
Libel and slander, Title 27, ch. 1, part 8.
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Defaming competitors — hearing aid dispensers, 37-16-411.
Marital status irrelevant to parent-child relationship, 40-6-103.
Use of force in defense of person, 45-3-102.
Mistreatment of prisoners, 45-5-204.
False imprisonment, 45-5-301.
Criminal defamation, 45-8-212.
Bail, Title 46, ch. 9.
Mental competency of criminal defendants, Title 46, ch. 14.
Criminal defamation — jury to decide law, 46-16-103.
Habeas corpus, Title 46, ch. 22.
Commitment of the developmentally disabled, Title 53, ch. 20, part 1.
Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-1-102. Freedom from discrimination. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) the right to obtain and hold employment without discrimination; and

(2) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

History: **En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301.**

Cross-References
Classified service employees — municipal commission-manager government, 7-3-4415.
Employment by county Board of Park Commissioners, 7-16-2326.
Work-study program, 20-25-707.
Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.
Women in employment, Title 39, ch. 7.
Exemption from association with labor organization on religious grounds, 39-31-204.
Health care facilities, 50-5-105.
Furnishing of medical assistance, 53-6-105.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Cross-References

Justifiable use of force, Title 45, ch. 3.

Part 2

Basic Political Rights

Part Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in government, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Right of suffrage, Art. II, sec. 13, Mont. Const.

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Initiative and referendum, Art. III, sec. 4 through 6, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Initiative and referendum — local government, Art. XI, sec. 8, Mont. Const.

Right to vote — race, sex, poll tax, age 18, Amend. 15, 19, 24, 26, U.S. Const.

Citizenship, Title 1, ch. 1, part 4.

Public participation in governmental operations, Title 2, ch. 3.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

United States citizenship — naturalization records, 3-5-514.

United States citizenship — naturalization fees, 3-5-515.

Access to public records — docket of lobbyists, 5-7-202.

Public participation in municipal government, 7-1-4131, 7-1-4141 through 7-1-4143, 7-3-1218, 7-3-4323.

Access to municipal public records, 7-1-4144.

Duty of citizens to aid in law enforcement, 7-4-4303, 7-4-4304, 45-7-304.

Citizen participation — proposals of Interlocal Cooperation Commission, 7-11-225.

Participation in home guard, 10-1-701.

Elections, Title 13.

Qualifications of voters, 13-1-111, 13-2-206.

Rights of convicted persons, 46-18-801.

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

Cross-References

Powers of municipalities with general powers, 7-1-4123, 7-1-4124.

Spouse abuse, Title 40, ch. 2, part 4.

Child abuse, neglect, and dependency, Title 41, ch. 3.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

Cross-References

Qualifications of Legislators, Art. V, sec. 4, Mont. Const.

Qualifications of executive officers, Art. VI, sec. 3, Mont. Const.

Qualifications of judicial officers, Art. VII, sec. 9, Mont. Const.

Qualifications of U.S. Representatives, Art. I, sec. 2, U.S. Const.

Qualifications of U.S. Senators, Art. I, sec. 3, U.S. Const.

Qualifications of U.S. President, Art. II, sec. 1, U.S. Const.

No religious test to hold public office, Art. VI, U.S. Const.

Eligibility to hold civil office, 2-16-102.
Qualifications of voters, 13-1-111, 13-2-206.

49-1-203. Rights and duties of electors as compared to nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

Cross-References

Privileges and immunities, Art. IV, sec. 2, U.S. Const.

Determination of residence, 1-1-215.

Qualifications of notary public, 1-5-402.

Qualifications for membership on licensing boards, 2-15-1841, 2-15-1842, 2-15-1844, 2-15-1851, 2-15-1873, 2-15-1881.

Qualifications for membership on agricultural research and marketing committees, 2-15-3002, 2-15-3103.

Membership on Judicial Standards Commission, 3-1-1101.

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Qualifications of District Court Judge, 3-5-202.

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Membership on Districting and Apportionment Commission, 5-1-101.

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Participation in home guard, 10-1-701.

Eligibility for liquor license, 16-4-401.

Public contracts — preference to Montana bidders, 18-1-102.

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Participation in registration of heritage properties, 22-3-431.

Eligibility to be an auctioneer, 30-11-508, 30-11-509.

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Qualifications for outfitter's or professional guide's license, 37-47-302, 37-47-303.

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Interstate Compact on Mental Health, 53-22-101.

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Issuance of commercial permits for timber removal, 77-5-212.

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CHAPTER 2

ILLEGAL DISCRIMINATION

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49-2-601. Criminal penalty.

Chapter Cross-References

Youth Conservation Corps age requirements as bona fide occupational qualification, 76-21-205.

Part 1

General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock

companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (17), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(18) "Staff" or "commission staff" means the staff of the commission for human rights.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979; amd. Sec. 1, Ch. 543, L. 1989.

Compiler's Comments

1989 Amendment: In definition of public accommodation inserted (b) stating the definition does not include certain distinctly private places. Amendment effective April 14, 1989.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

Part 2

Commission for Human Rights

Part Cross-References
Membership, allocation, 2-15-1706.

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter. Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Prohibited Discriminatory Practices

Part Cross-References

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: **Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.**

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: **En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.**

Cross-References

When accountability exists, 45-2-302.

Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985.

Cross-References

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, age, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3); amd. Sec. 1, Ch. 3, L. 1989; amd. Sec. 2, Ch. 543, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 3 inserted (3) permitting public accommodations to provide special treatment of persons based on age; and made minor changes in form.

Chapter 543 inserted (2) prohibiting discrimination by alcoholic beverage licensees other than fraternal lodges; and made minor changes in form. Amendment effective April 14, 1989.

Cross-References

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Opportunity for religious observance in mental health facilities, 53-21-142.

49-2-305. Discrimination in housing — exemptions. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(5) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(6) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a), (1)(b), and (1)(d), after "age", inserted "familial status"; inserted (4) exempting particular housing for older persons from prohibitions against age and familial status discrimination provisions; inserted (5) extending exemption from prohibition against age and familial status discrimination provisions to certain rooms or units where owner is in residence; and inserted (6) defining familial status.

Cross-References

Urban renewal, 7-15-4207.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).

Cross-References

State District Court jurisdiction, Title 3, ch. 5, part 3.

Municipal Court jurisdiction, 3-6-103.

Power to contract, Title 28, ch. 2, part 2.

No discrimination by certain insurers, 33-18-210.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7).

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Exemption from immunization requirements on religious grounds, 20-5-405.

49-2-308. Discrimination by the state. It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(1) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(3) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6).

Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Executive branch officers and agencies, Title 2, ch. 15.

Classified service employees — municipal commission-manager government, 7-3-4415.

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Employment by county Board of Park Commissioners, 7-16-2326.

Use of hospital district facilities, 7-34-2123.

Veterans' benefits, Title 10, ch. 2, part 3.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Exemption from school immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Work-study program, 20-25-707.

Library services for the handicapped, 22-1-103.

Religious beliefs of witness not relevant to credibility, Rule 610, Montana Rules of Evidence (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Right to refuse to participate in abortion, 50-20-111.

Furnishing of medical assistance, 53-6-105.

Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.

Community-based services for developmentally disabled, 53-20-212.

Community mental health centers, 53-21-206.

Ineligibility of handicapped for driver's license, 61-5-105.

Homestead exemption, Title 70, ch. 32, part 2.

Surviving spouse exempt from inheritance tax, 72-16-313.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, coverage, or any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

History: En. Secs. 1, 3, Ch. 531, L. 1983.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4

Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption. A person, educational institution, financial institution, or governmental entity or agency who or which seeks to be exempted from the requirements of part 3 of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985.

Cross-References

Power to contract, Title 28, ch. 2, part 2.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

49-2-405. *(Temporary)* **Veterans' and handicapped persons' employment preference.** The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

49-2-405. *(Effective July 1, 1991)* **Veterans' and handicapped persons' employment preference.** The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. Sec. 12, Ch. 1, Sp. L. 1983; amd. Sec. 15, Ch. 646, L. 1989.

Compiler's Comments

1989 Amendment: Inserted references to ch. 29 and to 39-29-101. Amendment terminates July 1, 1991.

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in subsection (2)(b), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979; amd. Sec. 1, Ch. 415, L. 1987.

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

49-2-503. Temporary relief by court order. (1) At any time after a complaint is filed under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3).

Cross-References

Injunctions, Title 27, ch. 19.

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially.

If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Montana Rules of Civil Procedure, Title 25, ch. 20.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985.

Cross-References

Venue in civil actions, Title 25, ch. 2.

Injunctions, Title 27, ch. 19.

49-2-509. Filing a complaint in district court. (1) Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 1, Ch. 505, L. 1983; amd. Sec. 1, Ch. 511, L. 1987.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

Cross-References

Obstructing a public servant, 45-7-302.

Place of imprisonment, 46-18-211.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

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Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Variation of oath to suit witness' belief, 1-6-103.

Religious beliefs of witness not relevant to credibility, Rule 610, Montana Rules of Evidence (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Youth Conservation Corps age requirements as bona fide occupational qualification, 76-21-205.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(4) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual

impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(5) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(6) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References

Applicability to community college districts, 20-15-403.

49-3-103. *(Temporary)* **Permitted distinctions.** (1) Nothing in this chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

49-3-103. *(Effective July 1, 1991)* **Permitted distinctions.** (1) Nothing in this chapter shall prohibit any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in Title 39, chapter 30, and 10-2-402 by a public employer as defined in 39-30-103 may not be construed to constitute a violation of this chapter.

History: **En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989.**

Compiler's Comments

1989 Amendment: In (2) inserted references to ch. 29 and to 39-29-101; and made minor changes in phraseology. Amendment terminates July 1, 1991.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: **En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.**

49-3-105. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

History: **En. Sec. 4, Ch. 540, L. 1983.**

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;
(2) conducting investigations of complaints;
(3) petitioning for a declaratory ruling, as provided in 49-3-105; and
(4) conduct of hearings.

History: **En. Sec. 2, Ch. 540, L. 1983.**

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Employment of veterans, Title 10, ch. 2, part 2.

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320.

Cross-References

State employment service, 39-1-102, 39-51-307.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979.

Cross-References

No aid to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Special education supervisor, 20-3-103.

Exemption from immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Charges for tuition — waivers, 20-25-421.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) prohibiting issuance of an alcoholic beverage license to persons who discriminate, but excluding fraternal lodges. Amendment effective April 14, 1989.

Cross-References

Restrictions on licensing of former criminal offenders, 23-4-201, 23-5-176, 32-2-409, 37-1-201 through 37-1-205, 37-47-302, 37-47-341.

Professions and Occupations, Title 37.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Exemptions from licensure as physician — Christian Science practitioners and mohels, 37-3-103.

Licensing and standards for spiritual healing institutions, 50-5-104.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-444 through 61-3-447, 61-3-451 through 61-3-453.

Ineligibility of handicapped for driver's license, 61-5-105.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979.

Cross-References

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Use of hospital district facilities, 7-34-2123.

Accessibility of polling places, Title 13, ch. 3, part 2.

Library services for the handicapped, 22-1-103.

Health care facilities, 50-5-105.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Community-based services for developmentally disabled, 53-20-212.

Opportunity for religious observance in mental health facilities, 53-21-142.

Community mental health centers, 53-21-206.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324.

Cross-References

Furnishing of medical assistance, 53-6-105.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services shall contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979.

Cross-References

Urban renewal, 7-15-4207.

Public Contracts, Title 18.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission.

History: En. Sec. 5, Ch. 540, L. 1983; amd. Sec. 2, Ch. 415, L. 1987.

49-3-305. Form of complaint. A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: En. Sec. 7, Ch. 540, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-307. Informal settlement. The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed with the commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in 49-3-311.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

History: En. Sec. 9, Ch. 540, L. 1983.

Cross-References

Contested case procedure under Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

49-3-309. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

History: **En. Sec. 10, Ch. 540, L. 1983.**

49-3-310. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

History: **En. Sec. 11, Ch. 540, L. 1983.**

49-3-311. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: **En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.**

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-312. Filing a complaint in district court. (1) Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the complaint shall be barred.

(6) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 13, Ch. 540, L. 1983; amd. Sec. 2, Ch. 511, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 4

RIGHTS OF THE HANDICAPPED

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Chapter Cross-References

Income tax exemption for handicapped child, 15-30-114.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

State School for the Deaf and Blind, Title 20, ch. 8.

Library services for the handicapped, 22-1-103.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

Exclusion from minimum wage and overtime compensation laws, 39-3-406.

Workers' compensation — vocationally handicapped, Title 39, ch. 71, part 9.

Workers' compensation — vocational rehabilitation, Title 39, ch. 71, part 10.

Mental competency of criminal defendants, Title 46, ch. 14.

Duty of state to develop services for handicapped children, 50-1-202.

Accessibility of buildings built with public funds, 50-60-201.

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Adoption of hard-to-place children, Title 53, ch. 4, part 3.

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Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.
Developmentally disabled, Title 53, ch. 20.
Mentally ill, Title 53, ch. 21.
No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.
Ineligibility for driver's license, 61-5-105.
Advertising by public utilities of special equipment to aid handicapped, 69-3-307.
Exemption from death taxes — property transferred to certain children's hospitals, 72-16-312.
Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

Part 1

Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Cross-References
Misdemeanor penalty, 46-18-212.

Part 2

Rights of the Physically Disabled

49-4-201. Repealed. Sec. 11, Ch. 239, L. 1983.

History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, the deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981.

Cross-References
Accessibility of polling places, Title 13, ch. 3, part 2.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981.

Cross-References

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-212. Access to housing accommodations. (1) Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind or deaf person has the right to be accompanied by a guide or hearing dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide or hearing dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind or deaf person who has a guide or hearing dog or who obtains a guide or hearing dog is entitled to full and equal

access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide or hearing dog but is liable for any damage done to the premises by the guide or hearing dog.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty, 46-18-212.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Special Parking Permits
Motorized Wheelchairs

49-4-301. Who eligible for special parking permit. (1) The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination; or

(c) has a temporary physical handicap that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983.

Cross-References

Special license plates for handicapped, 61-3-445.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-451 and conveying a 100% disabled veteran may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-451 and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons or permitholders on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985; amd. Sec. 1, Ch. 187, L. 1987.

Cross-References

Stopping, standing, and parking laws, 61-8-353 through 61-8-357.

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the department of justice on forms provided by the department, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the department.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

49-4-304. Special license plate or card to be provided and displayed. (1) The department of justice shall provide a special license plate under 61-3-445 or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate shall be affixed to the vehicle according to 61-3-301, or the card shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person in a vehicle other than the one to which his special license plate is affixed.

(2) Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

(3) The card must bear a representation of a wheelchair as the symbol of a handicapped person.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985.

49-4-305. Expiration of permit. A permit expires on:

(1) the death of the permittee; or

(2) certification by a physician that the permittee's physical handicap impairing his mobility no longer exists.

History: **En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983.**

49-4-306. Department of justice to publicize permit. (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

History: **En. Sec. 1, Ch. 32, L. 1981.**

49-4-307. Penalty. A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of $50. However, no person charged with violating 49-4-302(2) may be convicted if within 24 hours he produces in court or the office of the arresting officer a special parking permit previously issued to him and valid at the time of his arrest.

History: **En. Sec. 6, Ch. 614, L. 1983; amd. Sec. 2, Ch. 187, L. 1987.**

49-4-308 and 49-4-309 reserved.

49-4-310. Special parking permit for long-term care facility. A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

History: **En. Sec. 3, Ch. 187, L. 1987.**

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: **En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.**

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: **En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.**

Part 4

Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

49-4-401. En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.

49-4-402. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-403. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-404. En. Sec. 2, Ch. 474, L. 1979.

49-4-405. En. Sec. 3, Ch. 474, L. 1979.

49-4-406. En. Sec. 4, Ch. 474, L. 1979.

Part 5

Interpreters for the Deaf in Official Proceedings

Part Cross-References

State School for the Deaf and Blind, Title 20, ch. 8.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Workers' compensation for occupational deafness, Title 39, ch. 71, part 8.

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

Cross-References

Courts open to all persons for full legal redress, Art. II, sec. 16, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in 49-4-507.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

History: En. Sec. 2, Ch. 245, L. 1979.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: En. Sec. 3, Ch. 245, L. 1979.

Cross-References

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: En. Sec. 4, Ch. 245, L. 1979.

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: En. Sec. 5, Ch. 245, L. 1979.

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: En. Sec. 6, Ch. 245, L. 1979.

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

History: **En. Sec. 7, Ch. 245, L. 1979.**

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: **En. Sec. 8, Ch. 245, L. 1979.**

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: **En. Sec. 9, Ch. 245, L. 1979.**

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: **En. Sec. 10, Ch. 245, L. 1979.**

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: **En. Sec. 11, Ch. 245, L. 1979.**

Cross-References

Attorney-client privilege, 26-1-803.

TITLE 50

HEALTH AND SAFETY

Ch.
1. Department and Board of Health and Environmental Sciences.
2. Local Boards of Health.
3. State Fire Marshal.
Chapter 4 reserved.
5. Hospitals and Related Facilities.
6. Emergency Medical Services.
7. Home Health Agencies. Repealed. Sec. 27, Ch. 347, L. 1979.
8. One-Step Facility Licensing.
9. Living Will Act.
Chapters 10 through 14 reserved.
15. Vital Statistics.
16. Health Care Information.
17. Tuberculosis Control.
18. Sexually Transmitted Diseases.
19. Pregnant Women and Newborn Infants.
20. Abortion.
21. Cadavers and Autopsies.
22. Determination of Death.
23. Rabies Control.
Chapters 24 through 29 reserved.
30. Consumer Product Safety Act.
31. Montana Food, Drug, and Cosmetic Act.
32. Controlled Substances.
33. Blood and Blood Products.
34. Flour and Bread.
35. Imported Meats. Repealed. Sec. 1, Ch. 136, L. 1981.
36. Mattresses — Shoddy Control.
37. Fireworks.
38. Explosives. Repealed. Sec. 3, Ch. 187, L. 1985.
39. Fire Protection Equipment.
40. Smoking in Public Places.
41. Laetrile.
42. Dimethyl Sulfoxide (DMSO).
43. Calcium-EAP, Harnosal, and Phosetamin.
Chapters 44 through 49 reserved.
50. Food Establishments.
51. Hotels, Motels, and Roominghouses.
52. Tourist Campgrounds and Trailer Courts.
53. Public Swimming Pools and Swimming Areas.
Chapters 54 through 59 reserved.
60. Building Construction Standards.
61. Fire Safety in Public Buildings.
62. Fire Hazards.
63. Investigation of Fires.
64. Asbestos Regulation in Building Construction and Demolition.
Chapters 65 through 69 reserved.
70. Occupational Health.
71. Occupational Safety.
72. Safety in Mines Other Than Coal Mines.
73. Safety in Coal Mines.
74. Boilers and Steam Engines.
75. Consolidation of Boiler, Mine, and Coal Mine Inspectors. Repealed. Sec. 10, Ch. 21, L. 1981.
76. Hoisting Engines.
77. Construction Site Health and Safety.

78. Employee and Community Hazardous Chemical Information Act.

CHAPTER 1

DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

Part 1 — General Provisions

50-1-101. Definitions.
50-1-102. Legal adviser to board and department.
50-1-103. Enforcement of public health laws.
50-1-104. General penalty.

Part 2 — Department

50-1-201. Administration of state health plan.
50-1-202. General powers and duties.
50-1-203. Sanitary inspections.
50-1-204. Quarantine measures.
50-1-205. Repealed.
50-1-206. Regulation of schools in matters of health.

Part 3 — Board

50-1-301. Duties of board.
50-1-302. Board meetings.

Part 1

General Provisions

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

History: En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; R.C.M. 1947, 69-4102.

Cross-References

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-1-102. Legal adviser to board and department. The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716. Injunctions, Rule 65, M.R.Civ. P. (see Title 25, ch. 20); Title 27, ch. 19.

50-1-104. General penalty. Anyone who violates a rule adopted by the board or the department for which no penalty is specified is guilty of a misdemeanor.

History: En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974; R.C.M. 1947, 69-5701.

Cross-References

Penalty when none specified, 46-18-212.

Part 2

Department

50-1-201. Administration of state health plan. The department is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and cooperate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The department, while acting in this capacity as the sole and official state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, bequeathed, or appropriated to it for the preparation and administration and the supervision of the preparation and administration of the comprehensive state health plan.

History: En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1.

Cross-References

Medical aid, hospitalization, institutionalization of the indigent, 53-3-206, 53-3-209, 53-3-310, 53-3-313.

Adult foster family care homes, Title 53, ch. 5, part 3.

Medical assistance, medicaid, renal disease treatment, Montana State Hospital, Title 53, ch. 6.

Treatment, community-based services, community homes, protective services, state-owned facilities for the developmentally disabled, Title 53, ch. 20.

Community mental health centers, Montana State Hospital, community-based nursing homes, Center for the Aged, Title 53, ch. 21.

50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) after-care and related services; and

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) after consultation with the board, adopt rules imposing fees for the tests and services performed by the laboratory of the department. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees shall be deposited in the state special revenue fund for the use of the department in performing tests and services.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979; amd. Sec. 1, Ch. 230, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 660, L. 1983; amd. Sec. 1, Ch. 197, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (18) inserted "after consultation with the board" and at end of first clause, after "department", deleted "except fees relating to water analysis, which are imposed by the board pursuant to 75-6-103(2)(b)". Amendment effective March 21, 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, Title 17, ch. 2.

Montana University System, Title 20, ch. 25.

Policy to protect children from abuse, 41-3-101.

Local Boards of Health, Title 50, ch. 2, part 1.

One-step licensing — inspection by other department, Title 50, ch. 8.

Department to control tuberculosis, 50-17-103.

General administration of Department of Institutions, Title 53, ch. 1, part 2.

50-1-203. Sanitary inspections. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118.

Cross-References

Nuisances, Title 27, ch. 30.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines, except justice's court fines, shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112; amd. Sec. 33, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Fund structure, Title 17, ch. 2.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

History: En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Compliance with local health regulations required of nonpublic schools, 20-5-109.

School children to be immunized against communicable diseases, Title 20, ch. 5, part 4.

Trustees of community college district to comply with health provisions, 20-15-404.

Certification required for day-care center licensing, 52-2-722.

Part 3

Board

50-1-301. Duties of board. The board shall:

(1) advise the department in public health matters;

(2) hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

History: En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974; R.C.M. 1947, 69-4106.

Cross-References

Board of Health and Environmental Sciences created, 2-15-2104.

50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of health and environmental sciences shall serve as secretary to the board.

(3) The board shall meet once every two months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974; R.C.M. 1947, 69-4104.

CHAPTER 2

LOCAL BOARDS OF HEALTH

Part 1 — General Provisions

50-2-101. Definitions.
50-2-102. Repealed.
50-2-103. Federal funds.

50-2-104. County boards of health.
50-2-105. City boards of health.
50-2-106. City-county boards of health.
50-2-107. District boards of health.
50-2-108. Financing of local boards — inspection fund.
50-2-109. County board appropriations.
50-2-110. City board appropriations.
50-2-111. City-county board appropriations.
50-2-112. District board appropriations.
50-2-113. Contributions by school boards and other agencies authorized.
50-2-114. Special mill levy.
50-2-115. Legal adviser to local boards.
50-2-116. Powers and duties of local boards.
50-2-117. Appointment of local health officer by department when not made by local health board.
50-2-118. Powers and duties of local health officers.
50-2-119. Nursing services.
50-2-120. Assistance from law enforcement officials.
50-2-121. Removal of diseased prisoner from jail by local health officer.
50-2-122. Obstructing local health officer in the performance of his duties unlawful.
50-2-123. Compliance order authorized.
50-2-124. Penalties for violations.

Part 1

General Provisions

50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state.

History: (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (3) thru (5)En. Sec. 78, Ch. 197, L. 1967; Sec. 69-4501, R.C.M. 1947; R.C.M. 1947, 69-4102(2), (3), 69-4501.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Municipal Board of Health, 7-31-4101.

Licensing of physicians, Title 37, ch. 3.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.

History: En. Sec. 79, Ch. 197, L. 1967; amd. Sec. 54, Ch. 349, L. 1974; R.C.M. 1947, 69-4502.

50-2-103. Federal funds. The department may accept funds for public health from an agency of the federal government or from any other agency or person and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967; amd. Sec. 55, Ch. 349, L. 1974; R.C.M. 1947, 69-4503.

50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members shall be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977; R.C.M. 1947, 69-4504.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-105. City boards of health. (1) There is a city board of health in each first- and second-class city consisting of five persons who are appointed by the governing body of the city and serve at its pleasure.

(2) Terms of appointed members shall be staggered and shall be for 3 years each.

(3) The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967; amd. Sec. 2, Ch. 216, L. 1969; R.C.M. 1947, 69-4505.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Power to establish municipal Board of Health and to prescribe its powers and duties, 7-31-4101.

50-2-106. City-county boards of health. (1) By mutual agreement between the county commissioners and the governing body of the city, the county and a first- or second-class city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The board shall be composed of at least five persons. Terms of appointed members shall be staggered and shall be for 3 years each.

(4) By mutual agreement between the county commissioners and the governing body of the city, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967; amd. Sec. 3, Ch. 216, L. 1969; R.C.M. 1947, 69-4506.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Municipal Board of Health, 7-31-4101.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-107. District boards of health. (1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. First- and second-class cities located in those counties may elect to be included in the district.

(2) A district board of health consists of:

(a) one person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(b) one person appointed by the governing body of each city that elects to be included in the district who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon who serve at the pleasure of the appointing commissioners.

History: **En. Sec. 84, Ch. 197, L. 1967; R.C.M. 1947, 69-4507.**

Cross-References

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-108. Financing of local boards — inspection fund. (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) There is within the state special revenue fund a local board inspection fund account.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(1); (2)En. Sec. 4, Ch. 336, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

Cross-References

Fund structure, Title 17, ch. 2.

Source of account, 50-50-205, 50-51-204, 50-52-202.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

Use of inspection fund account, 50-50-305, 50-51-303, 50-52-302.

50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(a).**

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-110. City board appropriations. City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(b).**

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(2) (a) In first- and second-class counties, the county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(c).**

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-112. District board appropriations. (1) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county.

(2) First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.

(3) All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

History: **En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(d).**

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-113. Contributions by school boards and other agencies authorized. School boards and other official and nonofficial agencies may contribute funds to a local board.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(3).

Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.; Title 20, ch. 3, part 3.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-114. Special mill levy. If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2).

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(4).

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-115. Legal adviser to local boards. The county attorney shall serve as legal adviser to local boards as established by 50-2-104 and 50-2-106. The county attorney shall represent the local board in those matters relating to the functions, powers, and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975; R.C.M. 1947, 69-4508.1.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the county treasurer);

(k) adopt rules which do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth which might cause disease or adversely affect public health;

(iii) on sanitation in public buildings which affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations which might endanger human lives; and

(v) for the control and disposal of sewage from private and public buildings and for the maintenance of treatment systems which do not discharge an effluent directly into state waters and which are not required to have an operating permit as required by rules adopted under 75-5-401.

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509; amd. Sec. 1, Ch. 709, L. 1985.

Cross-References

Nuisances, Title 27, ch. 30.

Exemptions from requirements for sanitarians, 37-40-102.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-117. Appointment of local health officer by department when not made by local health board. (1) If a local health board does not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the local health board.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local health board.

History: En. Sec. 88, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4511; amd. Sec. 1, Ch. 101, L. 1983.

50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50, 51, and 52 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979.

Cross-References

City-county director's powers and duties, 7-3-1346.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-119. Nursing services. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes.

(2) Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(3) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from or by contract with the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967; R.C.M. 1947, 69-4512.

Cross-References

Licensing of nurses, Title 37, ch. 8.

50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: **En. Sec. 90, Ch. 197, L. 1967; R.C.M. 1947, 69-4513; amd. Sec. 1, Ch. 37, L. 1979.**

Cross-References

Local government law enforcement, Title 7, ch. 32.

Penalty when none specified, 46-18-212.

50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, he shall be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: **En. Sec. 93, Ch. 197, L. 1967; R.C.M. 1947, 69-4516.**

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: **En. Sec. 94, Ch. 197, L. 1967; R.C.M. 1947, 69-4517.**

Cross-References

Penalties for violations, 50-2-124.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

History: **En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(1).**

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $200.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor.

On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(2) thru (4); amd. Sec. 2, Ch. 709, L. 1985; amd. Sec. 34, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Unlawful disposition of dead animals, 75-10-213.

CHAPTER 3

STATE FIRE MARSHAL

Part 1 — General Provisions

50-3-101. Fire marshal defined.
50-3-102. Powers and duties of state fire marshal.
50-3-103. Rules promulgated by state fire marshal.
50-3-104. Fire marshal not to engage in other business.
50-3-105. Appointment of acting fire marshal.
50-3-106. Appointment of special deputy state fire marshals.
50-3-107. Appointment of assistants and clerical employees.
50-3-108. Oath of office required.
50-3-109. Tax on fire insurance premiums for maintenance of state fire marshal's office.

Part 1

General Provisions

Part Cross-References

Local government fire protection, Title 7, ch. 33.

Fire hazards, Title 50, ch. 62, part 1.

50-3-101. Fire marshal defined. In this chapter "fire marshal" or "state fire marshal" means the state fire marshal provided for in 2-15-2005.

History: En. 50-3-101 by Code Commissioner, 1979.

50-3-102. Powers and duties of state fire marshal. (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for statements of witnesses given during an investigation and information that may be held in confidence under 50-63-403, the record shall be open at all times to public inspection; and

(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

(2) The state fire marshal may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The state fire marshal shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the state fire marshal may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l)En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979; amd. Sec. 2, Ch. 187, L. 1985.

Cross-References

State Fire Marshal to review provisions for protection of state-owned buildings, 2-17-112.

Local government fire protection, Title 7, ch. 33.

Injunctions, Title 27, ch. 19.

Licensing of persons using explosives in construction or demolition, Title 37, ch. 72.

State Fire Marshal to set fire escape standards, 50-61-105.

State Fire Marshal to set fire safety standards for day-care centers, 52-2-734.

50-3-103. *(Effective April 1, 1990, unless contingency occurs)* **Rules promulgated by state fire marshal.** (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless powder and small arms primers; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor.

50-3-103. *(Effective on occurrence of contingency)* **Rules promulgated by state fire marshal.** (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor.

History: Ap. p. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; Sec. 82-1202.1, R.C.M.; Ap. p. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; R.C.M. 1947, 82-1202(3), (4), 82-1202.1(1) thru (3), (5); amd. Sec. 3, Ch. 352, L. 1985; amd. Sec. 4, Ch. 506, L. 1989.

Compiler's Comments

1989 Amendment: Near end of (1), after "protection", inserted "storage of smokeless powder and small arms primers". See contingent effective date compiler's comment.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Penalty where none specified, 46-18-212.

Building construction standards, Title 50, ch. 60.

State Fire Marshal to set fire escape standards, 50-61-105.

State Fire Marshal to adopt and enforce rules for fire safety in day-care centers, 52-2-734.

50-3-104. Fire marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in the office of the state fire marshal ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R.C.M. 1921; re-en. Sec. 2741, R.C.M. 1935; R.C.M. 1947, 82-1207.

50-3-105. Appointment of acting fire marshal. In an emergency or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal who shall perform the duties of the office or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(1).

Cross-References

Governor's proclamation of emergency, 10-3-505.

50-3-106. Appointment of special deputy state fire marshals. (1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties.

(2) When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(2); amd. Sec. 1, Ch. 121, L. 1979.

50-3-107. Appointment of assistants and clerical employees. The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(3).

50-3-108. Oath of office required. The state fire marshal shall file the oath of office required of all public officers. Any special deputy fire marshal appointed under the provisions of this chapter shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R.C.M. 1921; re-en. Sec. 2760, R.C.M. 1935; amd. Sec. 42, Ch. 177, L. 1965; R.C.M. 1947, 82-1230.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

50-3-109. Tax on fire insurance premiums for maintenance of state fire marshal's office. Each insurer authorized to effect insurance on risks enumerated in 19-11-512 doing business in this state shall pay to the state auditor and commissioner of insurance ex officio during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of ¾ of 1% on the fire portion of the direct premiums on such risks received during the calendar year next preceding after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R.C.M. 1921; re-en. Sec. 2761, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971; R.C.M. 1947, 82-1231.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; Title 2, ch. 15, part 6.

Commissioner of Insurance, 2-15-1903.

Insurers to report premiums for tax purposes, 33-2-705.

CHAPTER 4

RESERVED

CHAPTER 5

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Medical services and boarding homes for the aged, Title 7, ch. 34.

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Community mental health centers, Title 53, ch. 21, part 2.

Community-based nursing homes — Center for the Aged, Title 53, ch. 21, part 4.

Health facility development, Title 90, ch. 7.

50-5-101. *(Temporary)* **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization.

This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate

developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 53-19-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "Residential treatment facility" means a facility of not less than 30 beds that is operated by a nonprofit corporation or association for the primary purpose of providing long-term treatment services for mental illness in a nonhospital-based residential setting to persons under 21 years of age.

(41) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

50-5-101. *(Effective July 1, 1991)* **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(6) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(7) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(8) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(9) "Federal acts" means federal statutes for the construction of health care facilities.

(10) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(11) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(12) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(16) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 53-19-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(31) "Residential treatment facility" means a facility of not less than 30 beds that is operated by a nonprofit corporation or association for the primary purpose of providing long-term treatment services for mental illness in a nonhospital-based residential setting to persons under 21 years of age.

(32) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 330 in definition of long-term care facility substituted "persons with severe disabilities" for "physically disabled persons" and after "under" substituted "53-19-203" for "53-19-111". Amendment effective July 1, 1989.

Chapter 616 near end of definition of health care facility or facility inserted "residential treatment facilities"; and inserted definition of residential treatment facility. Amendment effective July 1, 1989.

Termination Extension: Sections 2 and 3, Ch. 377, L. 1989, amended the provisions that would terminate the temporary version of this section to extend the temporary version until July 1, 1991.

Cross-References

Health facility development — state financing or refinancing of eligible health facilities, Title 90, ch. 7.

50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 160, Ch. 197, L. 1967; R.C.M. 1947, 69-5202.

50-5-103. Rules and standards — accreditation by joint commission. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of hospitals, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the department may inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when such complaints pertain to licensing requirements. Inspection by the department upon such complaint shall be limited to the specific area or condition of the health care facility to which the complaint pertains.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979; amd. Sec. 2, Ch. 432, L. 1981.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

State Fire Marshal, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2) the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the

scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.

History: **En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979; amd. Sec. 1, Ch. 152, L. 1989; amd. Sec. 1, Ch. 309, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 152 inserted (2) relating to HIV and HIV-related conditions; and made minor change in grammar.

Chapter 309 inserted (4) prohibiting denial of hospital privileges to osteopaths and podiatrists, except for hospitals that employ their own medical staff; and inserted (5) to allow limitation of hospital membership or privileges under certain circumstances.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, Montana Rules of Evidence (see Title 26, ch. 10).

Freedom from discrimination provided, 49-1-102.

Discrimination in public accommodations prohibited, 49-2-304.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-106. *(Temporary)* **Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.

50-5-106. *(Effective July 1, 1991)* **Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979; amd. Sec. 13, Ch. 329, L. 1983; amd. Sec. 26, Ch. 632, L. 1987.

Compiler's Comments

Termination Extension: Sections 2 and 3, Ch. 377, L. 1989, amended the provisions that would terminate the temporary version of this section to extend the temporary version until July 1, 1991.

Cross-References

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

Cross-References

Unfair trade practices, Title 30, ch. 14, part 2.

Nursing, Title 37, ch. 8.

50-5-108. Injunction. The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979.

Cross-References

Duties of Attorney General, 2-15-501.

Injunctive relief procedures, Title 27, ch. 19.

50-5-109. Penalty. A person who violates provisions of parts 1 or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense.

History: En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

Part 2

Licensing

50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility.

History: En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979.

Cross-References

One-step licensing — inspection by other department, Title 50, ch. 8.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less—$20;

(2) facilities with 21 beds or more—$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

Cross-References

Fund structure, Title 17, ch. 2.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205.

50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new or renewal application, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(2) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year.

(3) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(4) The minimum standards which home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(5) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981; amd. Sec. 1, Ch. 443, L. 1985; amd. Sec. 1, Ch. 143, L. 1987.

Cross-References

Exemption from inspection — accredited hospital laboratories, 50-5-231.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Investigation of complaint under Montana Elder Abuse Prevention Act, 53-5-511.

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 165, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 23, Ch. 187, L. 1977; R.C.M. 1947, 69-5207.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 166, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5208.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated. - operating w/out a CON

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

History: En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979.

Cross-References

Montana Elder Abuse Protection Act, Title 53, ch. 5, part 5.

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the board.

(3) The decision of the board is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to

appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

History: En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 177, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5219.

50-5-210. Department to make rules — standards for hospices. (1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and his family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

History: En. Sec. 2, Ch. 324, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-5-211. Hospital hospice programs — exemptions from separate licensure. A hospice program provided by a hospital need not be separately licensed if the department finds that such program meets the standards of 50-5-210.

History: En. Sec. 3, Ch. 324, L. 1983.

50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in 72-17-213; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1).

History: En. Sec. 3, Ch. 219, L. 1987; amd. Sec. 1, Ch. 540, L. 1989.

Compiler's Comments

1989 Amendment: At end of (2) substituted reference to 72-17-213 for reference to 72-17-211.

50-5-213 through 50-5-220 reserved.

50-5-221. Civil penalty — injunction. (1) A person who violates the terms of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of this part, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 11, Ch. 347, L. 1979.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctions, Title 27, ch 19.

Criminal responsibilities of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

50-5-222 through 50-5-224 reserved.

50-5-225. Personal-care facilities — services to residents. A personal-care facility must provide the following services to facility residents:

(1) residential services, such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;

(2) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks;

(3) recreational activities; and

(4) supervision of self-medication.

History: En. Sec. 1, Ch. 597, L. 1983.

50-5-226. Placement in personal-care facilities. (1) A personal-care facility may not have as a resident a person who is:

(a) in need of medical or physical restraints;

(b) nonambulatory or bedridden;

(c) totally incontinent; or

(d) less than 18 years of age.

(2) The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, his physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited by subsection (1);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (2)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident.

History: En. Sec. 2, Ch. 597, L. 1983; amd. Sec. 1, Ch. 140, L. 1985.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

50-5-227. Licensing personal-care facilities. (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The department may by rule establish license fees, inspection fees, and fees for patient screening. Such fees must be reasonably related to service costs.

History: En. Sec. 3, Ch. 597, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

50-5-228. Limited licensing. The department may grant a license that is provisional upon the correction of noncompliance with provisions of 50-5-225 through 50-5-230 or rules adopted pursuant to 50-5-225 through 50-5-230. A provisional license may be granted only for a specific period of time and may not be renewed.

History: En. Sec. 4, Ch. 597, L. 1983.

50-5-229. Life-threatening situations — immediate license suspension. If the department has reason to believe that a life-threatening situation exists relating to residents of a personal-care facility, whether caused by an act or omission of the facility operator, act of nature, or any other cause, it may immediately suspend the facility's license and require evacuation of the facility. Within 5 days of such suspension, the department shall show cause in the district court of the county in which the facility is located why such suspension should be extended or the license permanently or temporarily revoked. After a hearing, the district court may remove the suspension or, upon finding sufficient cause, may:

(1) extend the license suspension until the life-threatening emergency has abated;

(2) order a conditional revocation or suspension of the license subject to correction of any life-threatening deficiency by the facility operator; or

(3) revoke the facility license.

History: En. Sec. 5, Ch. 597, L. 1983.

50-5-230. Enforcement — denial, suspension, or revocation of license — criminal and civil penalties — injunctions. (1) The department may deny, suspend, or revoke a personal-care facility license for failure to meet the minimum standards as set forth in 50-5-225 through 50-5-230 or applicable health standards established by the department.

(2) The department or the county attorney of the county in which the facility is located may, after notice to the facility operator of noncompliance with 50-5-226(1) and failure of the operator to correct such noncompliance within a period of time, which may not be less than 10 days, set forth in the notice, petition the district court of the county in which the facility is located for the imposition of a civil penalty not to exceed $500 per violation. Money collected as a civil penalty must be deposited in the state general fund.

(3) The department or the county attorney of the county in which the facility is located may bring an action in the district court of that county to enjoin any violation of a provision of 50-5-225 through 50-5-230.

(4) In addition to all other enforcement measures, a violation of the provisions of 50-5-225 through 50-5-230 is a misdemeanor, punishable upon conviction as provided in 46-18-212.

History: En. Sec. 6, Ch. 597, L. 1983.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctions, Title 27, ch 19.

Criminal responsibilities of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

50-5-231. Exemption from inspection — accredited hospital laboratories. (1) Any clinical laboratory that furnishes written evidence to the department of its accreditation by the college of American pathologists is exempt from inspection by the department during the period of accreditation.

(2) Subsection (1) applies only to those clinical laboratories operated by a hospital licensed by Montana.

History: En. Secs. 2, 3, Ch. 433, L. 1981.

Part 3

Certificate of Need

50-5-301. *(Temporary)* **When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility. The term does not include a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i).

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care, licensed under 53-5-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 53-19-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(1); amd. Sec. 3, Ch. 37, L. 1979; amd. Sec. 12, Ch. 347, L. 1979; amd. Sec. 2, Ch. 329, L. 1983; amd. Sec. 2, Ch. 140, L. 1985; amd. Sec. 3, Ch. 450, L. 1987; amd. Sec. 2, Ch. 477, L. 1987; amd. Sec. 14, Ch. 330, L. 1989; amd. Sec. 1, Ch. 377, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 330 in definition of long-term care facility substituted "persons with severe disabilities" for "physically disabled persons" and after "under" substituted "53-19-203" for "53-19-111". Amendment effective July 1, 1989.

Chapter 377 inserted (1)(i) requiring certificate of need before a hospital may provide ambulatory surgical care, home health care, long-term care, inpatient mental, chemical dependency, or rehabilitation care, or personal care; in (3)(a), after "home health agency", deleted "hospital" and inserted second sentence exempting hospitals from certificate of need requirements in certain circumstances; and made minor changes in style and punctuation. Amendment effective June 30, 1989.

Cross-References

County power to erect and manage hospitals and nursing homes, to lease property for hospital purposes, and to erect and operate a joint county hospital or nursing home with another county, 7-8-2102; Title 7, ch. 34, part 22; 7-34-2301; Title 7, ch. 34, part 25.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

50-5-302. *(Temporary)* **Letter of intent — application and review process.** (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling and consolidation of reviews;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);

(d) the format of public informational hearings and reconsideration hearings;

(e) the establishment of batching periods for certificate of need applications for new beds and major medical equipment, challenge periods, and the circumstances under which applications from different batches may be comparatively reviewed; and

(f) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.

(4) If the proposal is for new beds or major medical equipment, the department shall place the letter of intent in the appropriate batch unless, in the case of beds, the proposal is determined to be exempt from review.

(5) Any person who desires comparative review with a proposal in a batch must submit a challenge letter of intent at least by the end of the challenge period following the batching period for that batch.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant for the necessary additional information. Upon receipt of the additional information from the applicant, the department shall have 15 working days to determine if the application is complete and to send a notice to the applicant that the application is complete or incomplete. The request for added information may be repeated as long as the information submitted remains incomplete, and the department shall have 15 working days after each submission to send a notice that the application is complete or incomplete.

(8) If a proposal is to undergo comparative review with another proposal but the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by department rules, the application must be dropped from the current batch and assigned to the next batching period.

(9) If the department fails to send the notices within the periods prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.

(10) After an application is designated complete, immediate notification must be sent to the applicant and all other affected persons regarding the department's projected time schedule for review of the application. The review period for an application may be no longer than 90 calendar days after the notice is sent or, if a challenging application has been submitted as provided in subsection (5), within 90 days after the notice has been sent for all such challenging applications. A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area.

(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 13, Ch. 347, L. 1979; amd. Sec. 3, Ch. 329, L. 1983; amd. Sec. 1, Ch. 26, L. 1985; amd. Sec. 3, Ch. 140, L. 1985; amd. Sec. 3, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part).

50-5-304. *(Temporary)* **Review criteria, required findings, and standards.** The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed is consistent with the current state health plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing such services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; and

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(3), (4); amd. Sec. 14, Ch. 347, L. 1979; amd. Sec. 4, Ch. 329, L. 1983; amd. Sec. 4, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

50-5-305. *(Temporary)* **Period of validity of approved application.** (1) Unless an extension is granted pursuant to subsection (3), a certificate of need shall expire:

(a) 1 year after the decision to issue it is final if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year after the date the project is commenced plus the estimated period of time for completion shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.

(3) The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon the applicant's demonstrating good cause as defined by department rule.

(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6-month period after being granted a certificate of need until completion of the project for which the certificate of need was issued. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(5); amd. Sec. 15, Ch. 347, L. 1979; amd. Sec. 5, Ch. 329, L. 1983; amd. Sec. 5, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

50-5-306. *(Temporary)* **Right to hearing and appeal.** (1) An affected person may request the department to hold a public hearing and to reconsider its decision. The department shall grant the request if the affected person submits the request in writing and if the request is received by the department within 30 calendar days after the initial decision is announced.

(2) The public hearing to reconsider must be held within 30 calendar days after the request is received unless the requestor agrees to waive the time limit.

(3) The reconsideration hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the reconsideration hearing.

(5) Any affected person may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) If a petition to appeal the decision is filed, the decision must be stayed pending resolution of the appeal by the courts.

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(6); amd. Sec. 16, Ch. 347, L. 1979; amd. Sec. 6, Ch. 329, L. 1983; amd. Sec. 2, Ch. 26, L. 1985; amd. Sec. 6, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-307. *(Temporary)* **Civil penalty — injunction.** (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1). *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 17, Ch. 347, L. 1979.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctive relief provided, Title 27, ch. 19.

50-5-308. *(Temporary)* **Special circumstances.** The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health plan. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 18, Ch. 347, L. 1979; amd. Sec. 7, Ch. 329, L. 1983.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Cross-References

State Fire Marshal, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-309. *(Temporary)* **Exemptions from certificate of need review.** A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, is exempt from certificate of need review. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 9, Ch. 329, L. 1983; amd. Sec. 7, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

50-5-310. *(Temporary)* **Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee equaling 0.3% of the capital expenditure projected in the application, except that the fee may be no less than $500.

(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.

(4) Fees collected under this section must be deposited in the state general fund. *(Repealed effective July 1, 1991—sec. 2, 3, Ch. 377, L. 1989.)*

History: En. Sec. 8, Ch. 477, L. 1987.

Compiler's Comments

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

50-5-311 through 50-5-315 reserved.

50-5-316. Certificate of need for residential treatment facility. A person may not operate a residential treatment facility unless he has obtained a certificate of need issued by the department as provided under this part.

History: En. Sec. 3, Ch. 616, L. 1989.

Compiler's Comments

Effective Date: Section 9, Ch. 616, L. 1989, provided that this section is effective July 1, 1989.

50-5-317. Study of residential treatment facility needs — authorization for change of use — licensing of existing facilities. (1) In order to determine the need for services provided by a residential treatment facility, the department, together with the department of family services and the department of social and rehabilitation services, shall:

(a) conduct a review of the need for services provided by the residential treatment facility. The review must include a determination of:

(i) the number of persons between 5 and 21 years of age who:

(A) suffer from mental illness in this state; and

(B) are placed in out-of-state facilities by the department of family services and Montana school districts;

(ii) the appropriate levels of care or treatment for the persons described in subsection (1)(a)(i); and

(iii) the potential number of persons described in subsection (1)(a)(i) eligible for reimbursement of inpatient psychiatric services under 53-6-101;

(b) develop an appropriate methodology for determining the need for residential treatment facility services and beds; and

(c) report their findings to the 52nd legislature.

(2) Except as provided in subsection (3), the department may not issue a certificate of need for a new residential treatment facility or for any change in the capacity of an existing facility seeking a certificate of need as a residential treatment facility until after October 1, 1991.

(3) A person who operates an existing facility that meets the definition of a residential treatment facility on January 1, 1989, may receive a license to operate the facility as a residential treatment facility and need not obtain a certificate of need as otherwise required under 50-5-316.

History: En. Sec. 4, Ch. 616, L. 1989.

Compiler's Comments

Effective Date: Section 9, Ch. 616, L. 1989, provided that this section is effective July 1, 1989.

Part 4

State Plans and Programs — Federal Aid

Part Cross-References

Creation of public hospital districts and funding for county facilities, Title 7, ch. 34, parts 21 and 24.

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2) thru (7)En. Sec. 180, Ch. 197, L. 1967; amd. Sec. 76, Ch. 349, L. 1974; Sec. 69-5301, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-5301.

50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

Cross-References

Medical aid, hospitalization, institutionalization of the indigent, 53-3-206, 53-3-209, 53-3-310, 53-3-313.

Adult foster family care homes, Title 53, ch. 5, part 3.

Medical assistance, Medicaid, renal disease treatment, Montana State Hospital, Title 53, ch. 6.

Treatment, community-based services, community homes, protective services, and state-owned facilities for the developmentally disabled, Title 53, ch. 20.

Community mental health centers, Montana State Hospital, community-based nursing homes, Center for the Aged, Title 53, ch. 21.

50-5-403. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts and provide for the construction, maintenance, and operation in the order of relative need determined by the department.

History: En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. Duties of department. The department shall:

(1) prescribe minimum standards for the maintenance and operation of health care facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related health care facilities;

(3) survey the need for construction or alteration of health care facilities;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit health care facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out 50-5-402 through 50-5-411;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably available to all persons;

(8) submit to federal agencies state plans, including those for the health care facilities construction program and modifications of it providing for the establishment and operation of health care facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

Cross-References
State Treasurer, 2-15-1002.
Public contracts generally, Title 18, ch. 1.

50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate health care facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

Cross-References
Public contracts generally, Title 18, ch. 1.

50-5-406. Federal funds. (1) The department may accept federal funds.

(2) All federal funds received shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government.

(3) The department shall transmit federal funds to applicants for work performed or purchases made in carrying out approved projects. Claims for all payments shall be approved by the department.

History: En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

Cross-References
Fund structure, Title 17, ch. 2.

50-5-407. Publicity as to plans and hearing. Before submitting plans to a federal agency, the department shall give adequate publicity including a general description of the plans and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. Applications for construction projects. Applications for health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a health care facility.

History: En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. Hearing on denial of application. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

Cross-References
"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-5-410. Forwarding of application. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application complies with state and federal requirements and conforms to the state plan, the department shall forward the application to the appropriate federal agency.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single health care facility or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a health care facility, health care facility construction, issuance of bonds, or method of operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

Cross-References

Local government interlocal agreements, Title 7, ch. 11, part 1.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 192, Ch. 197, L. 1967; R.C.M. 1947, 69-5313.

50-5-413 through 50-5-420 reserved.

50-5-421 through 50-5-424. Repealed. Sec. 156, Ch. 370, L. 1987.

Compiler's Comments

Histories of Repealed Sections: **50-5-421 through 50-5-424.** En. Secs. 1 through 4, Ch. 668, L. 1983.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity;

(2) "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502. Refusal by hospital or health care facility to participate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any

discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).

Cross-References

Liability, Title 27, ch. 1, part 7.

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the grounds of "religious beliefs and moral convictions".

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Liability, Title 27, ch. 1, part 7.

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).

Cross-References

Injunctions, Title 27, ch. 19.

Termination of employment, Title 39, ch. 2, part 5.

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).

Part 6

Family Practice Residency Training

Part Cross-References

Western Regional Higher Education Compact, Title 20, ch. 25, part 8.

Licensing of physicians, Title 37, ch. 3.

50-5-601. Short title. This part may be cited as the "Family Practice Training Act of 1985".

History: En. Sec. 1, Ch. 649, L. 1985.

50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training.

History: **En. Sec. 2, Ch. 649, L. 1985.**

50-5-603. Montana family practice training program. (1) There is created a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

(3) No resident physician may train more than 2 months in any one community in any 12-month period.

History: **En. Sec. 3, Ch. 649, L. 1985.**

50-5-604 through 50-5-610 reserved.

50-5-611. Funding limitations. (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

History: **En. Sec. 4, Ch. 649, L. 1985.**

Parts 7 through 10 reserved

Part 11

Long-Term Health Care Facilities

50-5-1101. Short title. This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

History: **En. Sec. 1, Ch. 582, L. 1987.**

50-5-1102. Findings and purpose. (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

History: En. Sec. 2, Ch. 582, L. 1987.

50-5-1103. Definitions. In this part the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of health and environmental sciences.

(4) "Facility" or "long-term care facility" means a facility or part thereof licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

History: En. Sec. 3, Ch. 582, L. 1987.

50-5-1104. Rights of long-term care facility residents. (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395x(j) and 1396d(c), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of such councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder Abuse Prevention Act, Title 53, chapter 5, part 5.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

History: En. Sec. 4, Ch. 582, L. 1987.

50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

History: **En. Sec. 5, Ch. 582, L. 1987.**

50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

History: **En. Sec. 6, Ch. 582, L. 1987.**

50-5-1107. Enforcement of residents' rights. The requirements of 50-5-1104 through 50-5-1106 are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.

History: **En. Sec. 7, Ch. 582, L. 1987.**

CHAPTER 6

EMERGENCY MEDICAL SERVICES

Part 1 — Development of Program

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50-6-323. Powers and duties of department.
50-6-324. Advisory committee.
50-6-325. Waiver of licensing requirements
50-6-326. Injunction to require compliance.
50-6-327. Administrative enforcement.

Chapter Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Part 1

Development of Program

50-6-101. Legislative purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001.

50-6-102. Department to establish and administer program. The department of health and environmental sciences shall establish and administer an emergency medical services program.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

50-6-103. Powers of department. (1) The department of health and environmental sciences is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, or appropriated to the department.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).

50-6-104. Interdepartmental cooperation required. The department of health and environmental sciences, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 8, Ch. 274, L. 1981.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

Part 2

Emergency Medical Technicians

Part Cross-References

Workers' compensation — regulation of fees, 39-71-704.

50-6-201. Legislative findings. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003.

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Emergency medical technician—basic" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by said board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Emergency medical technician—advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.

(3) "Board" means the board of medical examiners, department of commerce.

History: En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004; amd. Sec. 3, Ch. 274, L. 1981.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-6-203. Rules. The board, after consultation with the department of health and environmental sciences, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of personnel, administration of drugs, and other acts as allowed herein.

History: **En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008; amd. Sec. 8, Ch. 274, L. 1981.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Justice, Title 2, ch. 15, part 20.

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

50-6-204. Emergency medical technician — basic. An emergency medical technician—basic may perform any of the following:

(1) render emergency care, rescue, and resuscitation services;

(2) provide emergency transportation;

(3) perform cardiopulmonary resuscitation in the pulseless, nonbreathing patient; and

(4) such other acts as the board may allow by rule.

History: **En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.**

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

50-6-205. Emergency medical technician — advanced. (1) An emergency medical technician—advanced may perform any of the following:

(a) render emergency care, rescue, and resuscitation services;

(b) while caring for patients during training at a hospital, ambulance, or other medical facility, administer parenteral medications under the direct supervision of a physician or a registered nurse;

(c) perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient; and

(d) such other acts as the board may allow by rule.

(2) When an emergency medical technician—advanced has voice contact with a physician and upon the physician's order or is functioning under formally adopted written standing orders of a local hospital medical staff, the following acts may be performed based upon such direct or indirect order:

(a) administer intravenous saline or glucose solutions;

(b) perform gastric or tracheal suction by intubation;

(c) administer parenteral injections of drugs approved by the board; and

(d) such other acts as the board may allow by rule.

History: **En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.**

50-6-206. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent, provided that such acts are in good faith and without knowledge of facts negating consent.

History: **En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009.**

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

50-6-207. Construction. Nothing in this part shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ambulance service as provided for in part 3 of this chapter.

History: **En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010.**

Part 3

Ambulance Service Licensing

Part Cross-References

Establishment of ambulance services by county, city, or town, Title 7, ch. 34, part 1.

Discrimination in licensing prohibited, 49-3-204.

50-6-301. *(Temporary)* **Findings and purposes.** The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services, as defined in 50-6-302, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being and the health and safety of the state and all its people.

50-6-301. *(Effective January 1, 1990)* **Findings.** The legislature finds and declares that:

(1) the public welfare requires the establishment of minimum uniform standards for the operation of emergency medical services;

(2) the control, inspection, and regulation of persons providing emergency medical services is necessary to prevent or eliminate improper care that may endanger the health of the public; and

(3) the regulation of emergency medical care services is in the interest of the social well-being and the health and safety of the state and all its people.

History: **En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604; amd. Sec. 1, Ch. 387, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning inserted "legislature finds and declares that: (1) the"; in (1) substituted "emergency medical services" for "ambulance services" and after "services" deleted "as defined in 50-6-302"; in (2) substituted "providing emergency medical services is necessary" for "engaged therein in order"; in (3) substituted "emergency medical care services" for "establishments providing such service"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-302. *(Temporary)* **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this part, but does not include a motor vehicle owned by or operated under the direct control of the United States or this state.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(7) "Driver" means an individual who drives an ambulance.

(8) "Dual purpose police patrol car" means a vehicle operated by a police department which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.

50-6-302. *(Effective January 1, 1990)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(9) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605; amd. Sec. 2, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: Inserted definitions of aircraft, emergency medical service, medical control, and nontransporting medical unit; in definition of ambulance, after "vehicle", inserted "or aircraft", after "that" deleted "is especially designed, constructed, and equipped which", after "patients" deleted language concerning dual purpose vehicles, at beginning of second sentence inserted "The term", after "vehicle" inserted "or aircraft", after "States" deleted "or this state", and inserted third sentence excluding from definition certain operators regulated by federal government; deleted former definitions of ambulance service, attendant, attendant driver, driver, and dual purpose police patrol car; and made minor changes in style. Amendment effective January 1, 1990.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Limits on liability for emergency care rendered at the scene of accident or emergency, 27-1-714.

50-6-303. *(Temporary)* **Rules.** (1) The department shall prescribe and enforce rules which are necessary to carry out the provisions of this part.

(2) These rules shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(3) No rules shall be effective until a public hearing has been held for review of the rules.

(4) Notice of the public hearing shall be sent by ordinary mail at least 30 days before the hearing to all Montana licensed operators along with a copy of the proposed rules. *(Repealed effective January 1, 1990—sec. 17, Ch. 387, L. 1989.)*

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-6-304. *(Temporary)* **Cooperative agreements.** The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part or any part thereof.

50-6-304. *(Effective January 1, 1990)* **Cooperative agreements — gifts, grants, and donations.** (1) The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part.

(2) The department may accept and administer any gift, grant, or donation of funds to carry out the purposes of this part.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3); amd. Sec. 4, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) deleted "or any part thereof"; and inserted (2) authorizing Department to accept and administer gift, grant, or donated funds. Amendment effective January 1, 1990.

50-6-305. *(Temporary)* **Minimum equipment requirements.** (1) Pursuant to the provisions of this part, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American red cross first aid or its equivalent.

(2) Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the department shall not prescribe and enforce any rules related to ambulance equipment and training which exceed these requirements. *(Repealed effective January 1, 1990—sec. 17, Ch. 387, L. 1989.)*

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

50-6-306. *(Temporary)* **License required.** (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right unless conditions exist as specified by this part which are grounds for a cancellation or denial of a license.

(4) The applicant may apply for a hearing and judicial review as specified by this part upon being denied a license or upon cancellation.

(5) Each license shall expire on December 31 following its date of issue unless canceled for cause. Renewal may be obtained by paying the required annual license fee.

(6) The license shall not be transferable or be applicable to any premises other than that for which originally issued.

50-6-306. *(Effective January 1, 1990)* **License required.** (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) Each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(4) The license is not transferable.

History: En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2); amd. Sec. 5, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "may not conduct or operate an emergency medical service without first obtaining" for "conducting or operating an ambulance service shall procure", after "license" substituted "from" for "issued by", and in second sentence, after "each", substituted "type and level of service" for "establishment"; deleted former (3) requiring licenses to be granted as matter of right; deleted (4) allowing applicant to apply for hearing and review upon license denial or cancellation; in first sentence of (3) substituted "must be issued for a specific term not to exceed 2 years" for "shall expire on December 31 following its date of issue unless canceled for cause" and in second sentence, before "license fee", deleted "annual" and at end inserted "and demonstrating compliance with department rules"; in (4), after "transferable", deleted "or be applicable to any premises other than that for which originally issued"; and made minor changes in grammar and style. Amendment effective January 1, 1990.

50-6-307. *(Temporary)* **License fee.** (1) There shall be paid to the department, with each application for a license or for renewal of a license, an annual license fee of $35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

50-6-307. *(Effective January 1, 1990)* **License fee.** (1) There must be paid to the department, with each application for a license or for renewal of a license, a license fee of $35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part must be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613; amd. Sec. 1, Ch. 592, L. 1983; amd. Sec. 6, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: Near end of (1) deleted "an annual"; and made minor changes in grammar. Amendment effective January 1, 1990.

Cross-References

Fund structure, Title 17, ch. 2.

50-6-308. *(Temporary)* **Cancellation of license.** The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this part and the licensee has failed or refused to remedy or correct the violation.

50-6-308. *(Effective January 1, 1990)* **Cancellation of license.** The department may cancel a license if it finds that the licensee has:

(1) violated any provision of this part or any rule of the department or order of the department or board; and

(2) failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 7, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: In (1) inserted reference to order of the Department or Board; at beginning of (2) deleted "the licensee has"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-309. *(Temporary)* **Submission of plan of correction as bar to cancellation.** Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department is a bar to prosecution for violation. *(Repealed effective January 1, 1990—sec. 17, Ch. 387, L. 1989.)*

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).

50-6-312. *(Temporary)* **Hardship exception authorized.** (1) If the board finds that the violations of this part do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed 1 year, during which time a license may not be denied the licensee nor may his license be canceled.

(2) Subsequent exceptions may be granted the licensee, each for a period not to exceed 1 year and each after a hearing before the board. *(Repealed effective January 1, 1990—sec. 17, Ch. 387, L. 1989.)*

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-313. *(Temporary)* **Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which the department may consider necessary.

(3) The department has free access at all reasonable hours to the establishments listed and defined in 50-6-302 to make inspections.

50-6-313. *(Effective January 1, 1990)* **Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to his compliance with the provisions of this part as determined by the department, based upon its inspection.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610; amd. Sec. 9, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: Near end of (2) substituted "it considers" for "the department may consider"; in (3) substituted "the place of business of any person operating an emergency medical service in order" for "the establishments listed and defined in 50-6-302", after "make" inserted "necessary", and inserted second sentence expanding inspections to include equipment or records of medical service; inserted (4) prohibiting person from refusing entry or access to Department for inspection or interfering with inspection; and inserted (5) requiring Department, upon request, to provide operator with inspection report. Amendment effective January 1, 1990.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-6-314. *(Temporary)* **Authority of board to compel and take testimony.** In any proceeding under this part, the board may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

50-6-314. *(Effective January 1, 1990)* **Authority of board or department to compel and take testimony.** In any proceeding under this part, the board or department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611; amd. Sec. 13, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: After "board" inserted "or department". Amendment effective January 1, 1990.

50-6-315. *(Temporary)* **County attorney to prosecute violations.** When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or the rules adopted under this part.

50-6-315. *(Effective January 1, 1990)* **County attorney to prosecute violations.** When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the department or order issued by the department or board.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4); amd. Sec. 14, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: At end substituted "any rule of the department or order issued by the department or board" for "the rules adopted under this part". Amendment effective January 1, 1990.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

50-6-316. *(Temporary)* **Penalty.** Any person violating any provision of this part or regulation made hereunder shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

50-6-316. *(Effective January 1, 1990)* **Criminal and civil penalties.** (1) Any person violating any provision of this part or any rule of the department or order issued by the department or board shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

(2) A person who violates any provision of this part or any rule of the department or order issued by the department or board is subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation constitutes a separate violation.

(3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this part as provided in 50-6-327 or an injunction as provided in 50-6-326.

(4) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department or board, it shall bring an action in the name of the state against such person to impose, assess, and recover the civil penalties as provided in subsection (2).

(5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for in subsection (1).

(6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for deposit in the state general fund.

History: En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612; amd. Sec. 15, Ch. 387, L. 1989; (2) thru (6)En. Sec. 16, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: In (1), after "part or", substituted "any rule of the department or order issued by the department or board" for "regulation made hereunder"; and inserted (2), (3), (4), (5), and (6) concerning civil penalties (see sec. 16, Ch. 387, L. 1989, for text). Amendment effective January 1, 1990.

50-6-317 through 50-6-322 reserved.

50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) The department shall receive and investigate complaints relating to the operation of any emergency medical service, including complaints concerning:

(a) patient care provided by an emergency medical service;

(b) the condition of any vehicle or aircraft used as an ambulance; or

(c) individual performance by an emergency medical service provider.

(3) Upon completion of an investigation as provided in subsection (2), the department shall take appropriate action, including the institution of necessary legal proceedings, as authorized under this part.

(4) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of prehospital and interhospital medical transportation or treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

(d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.

(5) A rule under this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing.

History: En. Sec. 3, Ch. 387, L. 1989.

Compiler's Comments

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective March 30, 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-6-324. *(Effective January 1, 1990)* **Advisory committee.** (1) The board or department may establish an advisory committee to assist in making determinations regarding:

(a) a request for waiver of licensing requirements as provided in 50-6-325;

(b) the resolution of a complaint as described in 50-6-323; and

(c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department.

History: En. Sec. 12, Ch. 387, L. 1989.

Compiler's Comments

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-325. *(Effective January 1, 1990)* **Waiver of licensing requirements** (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

(a) the waiver is necessary to avoid significant financial or other hardship; and

(b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board.

History: En. Sec. 8, Ch. 387, L. 1989.

Compiler's Comments

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-326. *(Effective January 1, 1990)* **Injunction to require compliance.** (1) The department may seek an injunction from an appropriate district court to require compliance with this part or to require compliance with a rule of the department or an order issued by the department or board. The court to which the department applies for an injunction may issue a temporary restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance.

History: En. Sec. 10, Ch. 387, L. 1989.

Compiler's Comments

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-327. *(Effective January 1, 1990)* **Administrative enforcement.** (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or his agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the board. Such request for a hearing must be made in writing to the board at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the board shall schedule a date for a hearing.

(4) If, after a hearing, the board finds that a violation has occurred, it shall either affirm or modify the order issued by the department. An order issued by the board may prescribe the date by which the violation must cease

and may prescribe time limits for corrective action. If, after a hearing, the board finds no violation has occurred, it shall rescind the department's order.

History: En. Sec. 11, Ch. 387, L. 1989.

Compiler's Comments

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

CHAPTER 7

HOME HEALTH AGENCIES
(Repealed. Sec. 27, Ch. 347, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-7-101 through 50-7-309. En. Secs. 1 thru 10, Ch. 383, L. 1977; R.C.M. 1947, 69-7301 thru 69-7310.

CHAPTER 8

ONE-STEP FACILITY LICENSING

Part 1 — General

50-8-101. Definitions.
50-8-102. One-step licensing required.
50-8-103 and 50-8-104 reserved.
50-8-105. Inspections by employees of other department.

Part 1

General

50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of institutions, the department of health and environmental sciences, and the department of family services.

(2) "Facility" means:

(a) for the department of institutions, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster care homes; and

(ii) youth care facilities; and

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license.

History: En. Sec. 1, Ch. 356, L. 1983; amd. Sec. 66, Ch. 609, L. 1987.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Department of Institutions, Title 2, ch. 15, part 23.

50-8-102. One-step licensing required. Each department shall provide one-step licensing of all facilities under its jurisdiction. One-step licensing is at a minimum the provision of a designated office within the department or, by agreement between departments, in another department, responsible for issuing facility licenses. The one-step licensing office shall facilitate intradepartmental certifications for licensure. When practicable, one-step licensure also includes:

(1) the coordination of all governmental licensing functions, state and local, required for the licensure of a facility for a program or a service and for health and safety standards. The coordination must include at a minimum the names, addresses, and functions of all governmental authorities enforcing such standards and may include the requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for assuming the responsibility for insuring timely inspections, reviews, and application processing by other agencies.

(2) the use of departmental employees to inspect specified types of facilities for particular health and safety standards as provided in 50-8-105.

History: En. Sec. 2, Ch. 356, L. 1983.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

50-8-103 and 50-8-104 reserved.

50-8-105. Inspections by employees of other department. (1) Each department may, by joint rule with a state agency or by interlocal agreement with other governmental entities, authorize departmental employees to perform specific health and safety inspections for certain classes of facilities under the jurisdiction of another department or agency. Such inspections may be limited by type of facility, scope of inspection, and type of inspection, such as original application, renewal application, routine or unannounced inspection, or other identifiable inspection situations.

(2) The inspecting authority, prior to authorizing employees of another department or agency to make an inspection, may require minimal standards of knowledge or training relevant to the type of inspection to be conducted.

The inspecting authority may require periodic reexamination of such employees for necessary knowledge and ability.

(3) The inspecting authority delegates authority to the employees of another department or agency and is responsible for the quality of the inspections. The inspecting authority shall perform an inspection delegated to such an employee if the other department or agency or the head of the facility believes that the inspection situation is unique or that the employee is in error. The result of an inspection by the inspecting authority takes precedence over an inspection by an employee of another department or agency.

History: En. Sec. 3, Ch. 356, L. 1983.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

CHAPTER 9

LIVING WILL ACT

Part 1 — General

50-9-101. Short title.
50-9-102. Definitions.
50-9-103. Declaration relating to use of life-sustaining procedures.
50-9-104. Revocation of declaration.
50-9-105 through 50-9-109 reserved.
50-9-110. Authority to adopt rules.
50-9-111. Recognition of declarations executed in other states.

Part 2 — Effect on Health Care—Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration.
50-9-202. Treatment of qualified patients.
50-9-203. Transfer of patients.
50-9-204. Immunities.
50-9-205. Effect on insurance — patient's decision.
50-9-206. Penalties.

Part 1

General

Part Cross-References

Determination of death, 50-22-101.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-9-101. Short title. This chapter may be cited as the "Montana Living Will Act".

History: En. Sec. 1, Ch. 369, L. 1985.

50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of health and environmental sciences.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

(10) "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(11) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(12) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

History: En. Sec. 2, Ch. 369, L. 1985; amd. Sec. 1, Ch. 475, L. 1989.

Compiler's Comments

1989 Amendment: Inserted definitions of board, department, emergency medical services personnel, living will protocol, and reliable documentation. Amendment effective April 8, 1989.

50-9-103. Declaration relating to use of life-sustaining procedures. (1) Any competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. However, the declaration is effective only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions. The declaration must be signed by the declarant, or another at the declarant's direction, in the presence of two witnesses. A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) It is the responsibility of the declarant to notify his physician of the declaration. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(3) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain. It is my intention that this declaration shall be valid until revoked by me.

Signed this .... day of ...., ...
Signature..
City, County, and State of Residence ....

The declarant is known to me and voluntarily signed this document in my presence.

Witness...
Address...
Witness...
Address...

History: En. Sec. 3, Ch. 369, L. 1985.

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

50-9-104. Revocation of declaration. (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record.

History: En. Sec. 4, Ch. 369, L. 1985; amd. Sec. 2, Ch. 475, L. 1989.

Compiler's Comments

1989 Amendment: Inserted third and fourth sentences of (1) clarifying actions required of witnesses to a revocation. Amendment effective April 8, 1989.

50-9-105 through 50-9-109 reserved.

50-9-110. Authority to adopt rules. The department may adopt rules to implement this chapter.

History: **En. Sec. 4, Ch. 475, L. 1989.**

Compiler's Comments

Effective Date: Section 6, Ch. 475, L. 1989, provided that this section is effective April 8, 1989.

50-9-111. Recognition of declarations executed in other states. A declaration executed in a manner substantially similar to 50-9-103 in another state and in compliance with the law of that state is effective for purposes of this chapter.

History: **En. Sec. 11, Ch. 369, L. 1985.**

Part 2

Effect on Health Care — Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration. When an attending physician who has been notified of the existence and content of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the content of the declaration in the declarant's medical record.

History: **En. Sec. 5, Ch. 369, L. 1985.**

50-9-202. Treatment of qualified patients. (1) A qualified patient has the right to make decisions regarding use of life-sustaining procedures if the patient is able to do so. If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures.

(2) This chapter does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or to alleviate pain.

(3) The declaration of a qualified patient known to the attending physician to be pregnant must be given no effect if it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

History: **En. Sec. 6, Ch. 369, L. 1985.**

Cross-References

Protection of premature infants born alive, 50-20-108.

50-9-203. Transfer of patients. (1) An attending physician who is unwilling to comply with the requirements of 50-9-201 or who is unwilling to comply with the declaration of a qualified patient in accordance with 50-9-202 shall take all reasonable steps to transfer the declarant to another physician.

(2) If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take

all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out.

History: **En. Sec. 7, Ch. 369, L. 1985.**

Cross-References

Right to refuse participation in sterilization, Title 50, ch. 5, part 5.

Right to refuse participation in abortion, 50-20-111.

50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards.

History: **En. Sec. 8, Ch. 369, L. 1985; amd. Sec. 3, Ch. 475, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (1)(c) and (1)(d) granting immunity to emergency medical services personnel; and made minor changes in phraseology. Amendment effective April 8, 1989.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-9-205. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration and in accordance with this chapter is not, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may require any person to execute a declaration as a condition for being insured for or receiving health care services.

(4) This chapter creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

(5) Nothing in this chapter increases or decreases the right of a patient to make decisions regarding use of life-sustaining procedures if the patient is able to do so or impairs or supersedes any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

(6) This chapter does not authorize or approve mercy killing.

History: **En. Sec. 10, Ch. 369, L. 1985.**

50-9-206. Penalties. (1) A physician who willfully fails to transfer in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician who willfully fails to record the determination of terminal condition in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) A person who falsifies or forges the declaration of another or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104, with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

History: **En. Sec. 9, Ch. 369, L. 1985.**

Cross-References

Licensing and regulation of physicians, Title 37, ch. 3.

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

VITAL STATISTICS

Part 1 — General Provisions

50-15-101. Definitions.
50-15-102. Statewide system of vital statistics to be established.
50-15-103. Duties of department.
50-15-104. Appointment and supervision of local registrars.
50-15-105. Appointment of deputies authorized.
50-15-106. Registrars and deputies to report violations.
50-15-107. Payment of fees to local registrars.
50-15-108. Duty to furnish information.
50-15-109. Certificates.

50-15-110. Certified copy of certificate.
50-15-111. Certified copy fee.
50-15-112. Inspection of records and issuance of copies limited.
50-15-113. Disclosure of information to governmental agencies.
50-15-114. Unlawful acts and penalties.

Part 2 — Birth

50-15-201. Birth certificate to be filed.
50-15-202. Unattended birth.
50-15-203. Child of unknown parentage.
50-15-204. Delayed or amended birth certificate.
50-15-205. Establishment of date and place of birth when certificate cannot be obtained.
50-15-206. Permissible disclosure of birth out of wedlock.
50-15-207. New birth certificate upon proof of legitimation.

Part 3 — Marriage and Adoption

50-15-301. Marriage certificates.
50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.
50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption.
50-15-304. Substitute birth certificate for person adopted.

Part 4 — Death

50-15-401. Death certificate to be filed.
50-15-402. Copy to be forwarded to deceased's county of residence.
50-15-403. Preparation of certificate when death medically attended.
50-15-404. Preparation of certificate when death not medically attended.
50-15-405. Permit for disposition of body.
50-15-406. Body brought into state for disposition.
50-15-407. Disinterment permit.

Parts 5 and 6 reserved

Part 7 — Tumor Registry

50-15-701. Short title.
50-15-702. Definitions.
50-15-703. Duty to report tumors.
50-15-704. Confidentiality.
50-15-705. Tumor registry.
50-15-706. Rules.

Part 1

General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation which is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981.

Cross-References

Determination of death, 50-22-101.

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-103. Duties of department. The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-107. Payment of fees to local registrars. (1) The department may specify by regulation a fee to be paid each local registrar for each complete birth, death, or fetal death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.

Cross-References

Fees to be charged by registrars for copies, 7-4-2631.

50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

50-15-109. Certificates. (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

Cross-References

Uniform Parentage Act, Title 40, ch. 6, part 1.

50-15-110. Certified copy of certificate. Subject to the limitations of 50-15-112, 50-15-113, 50-15-114, subsections (3) and (4) of 50-15-204, and 50-15-206, the department shall furnish to any applicant a certified copy of a certificate or part of it upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe a fee of not less than $5 for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited in the state special revenue fund to be used by the department for the maintenance of indexes to and costs for the preservation of vital records.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983.

Cross-References

Fund structure, Title 17, ch. 2.

50-15-112. Inspection of records and issuance of copies limited. (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to:

(a) the interests of the persons described in 50-15-206 for the purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations; and

(b) the interest of a funeral director or mortician licensed under Title 37, chapter 19, with respect to the funeral of a deceased individual named on a death certificate.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 118 in definition of tangible interest added child support actions.

Chapter 456 inserted (2)(b) relating to the interest of a funeral director or mortician with respect to a deceased individual.

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-113. Disclosure of information to governmental agencies. (1) The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board.

(2) If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989.

Compiler's Comments

1989 Amendment: In (3) increased from $100 to $500 maximum penalty for knowingly transporting, interring, or disposing of a dead body without a permit or for refusing to provide information required by law; and made minor changes in phraseology.

Cross-References

"Willfully" defined, 1-1-204.

"Knowingly" defined, 1-1-204, 45-2-101.

Permit for disposition of body, 50-15-405.

Part 2

Birth

Part Cross-References

County Clerk to record births, 7-4-2613, 7-4-2619.

50-15-201. Birth certificate to be filed. Within the time prescribed by the department, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

Cross-References

Change of name procedure, Title 27, ch. 31.

Birth date, procedure for judicial determination, Title 27, ch. 32.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) After the time prescribed by the department, a person born in this state may file a birth certificate upon submitting proof as required by the department or by any court.

(2) A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) If birth certificates are accepted 6 months or more after the time prescribed for filing or are altered by the department after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered". A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

(4) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: **(1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419.**

Cross-References

Proof of contents of public record, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

50-15-205. Establishment of date and place of birth when certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the department, the judicial procedure to establish date and place of birth is as follows:

(1) The person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitle him to the birth certificate.

(2) If the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts.

(3) The court order or a certified copy is recorded with the county clerk and recorder and with the department.

(4) From the court order, the department makes a transcript of the important facts and issues a delayed birth certificate.

History: **En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.**

Cross-References

Birth date — procedure for judicial determination, Title 27, ch. 32.

50-15-206. Permissible disclosure of birth out of wedlock. (1) Disclosure of birth out of wedlock or information from which birth out of wedlock can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services, the department of family services, the department of revenue, or a licensed adoption agency for purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

Compiler's Comments

1989 Amendment: In (1), in two places, substituted reference to birth out of wedlock for illegitimate birth; and in (1)(b) inserted reference to Department of Revenue and added child support actions.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

Part 3

Marriage and Adoption

Part Cross-References

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.

Proof of marriage without solemnization, 40-1-311.

Registration of marriages, 40-1-321.

Certificates of marriage and records thereof as evidence of marriage, 40-1-322.

Proof of solemnized marriage when no record, 40-1-323.

Adoption, Title 40, ch. 8.

50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981.

Cross-References

Marriage licenses, Title 40, ch. 1, part 2.

50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Dissolution of marriage, Title 40, ch. 4, part 1.

50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the 10th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Termination of marriage, Title 40, ch. 4.

Uniform Adoption Act, Title 40, ch. 8.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

Uniform Adoption Act, Title 40, ch. 8.

Adoptive parents defined, 40-8-103.

Part 4

Death

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Disposition and removal of remains, Title 35, ch. 21, part 3.

50-15-401. Death certificate to be filed. A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within a time frame prescribed by the department. If the place of death or fetal death is unknown, the certificate shall be filed within 24 hours after the occurrence is known.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence substituted "a time frame prescribed by the department" for "3 days after the occurrence is known".

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).

Cross-References

Residence — rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) (a) present the death certificate to the physician last in attendance upon the deceased, the coroner having jurisdiction, or the state medical examiner, who shall certify the cause of death according to his best knowledge and belief; or

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence.

History: En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979.

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979.

50-15-405. Permit for disposition of body. (1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979.

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Parts 5 and 6 reserved

Part 7

Tumor Registry

50-15-701. Short title. This part may be cited as the "Tumor Registry Act".

History: En. Sec. 1, Ch. 354, L. 1981.

50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana.

History: En. Sec. 2, Ch. 354, L. 1981.

50-15-703. Duty to report tumors. A hospital that provides to any person medical services relating to a tumor designated as reportable by the department or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor shall make available to the department all medical and personal information and laboratory results relevant to that person's treatment and condition on forms provided by the department.

History: En. Sec. 3, Ch. 354, L. 1981; amd. Sec. 1, Ch. 12, L. 1985.

50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of Title 50, chapter 16, part 5, are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state.

History: En. Sec. 4, Ch. 354, L. 1981; amd. Sec. 27, Ch. 632, L. 1987.

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-705. Tumor registry. The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to 50-15-703.

History: En. Sec. 5, Ch. 354, L. 1981.

50-15-706. Rules. The department may adopt rules implementing this part, including:

(1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

History: **En. Sec. 6, Ch. 354, L. 1981.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

CHAPTER 16

HEALTH CARE INFORMATION

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50-16-102. Information on infant morbidity and mortality.

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50-16-202. Committees to have access to information.
50-16-203. Committee information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential — inadmissible in judicial proceedings.

Part 3 — Confidentiality of Health Care Information (Repealed. Sec. 31, Ch. 632, L. 1987)

Part 4 — Health Information Center

50-16-401. Repealed.

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50-16-602. Definitions.
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Part 7 — Report of Exposure to Infectious Disease

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50-16-702. Report of unprotected exposure to disease.
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50-16-704. Confidentiality — penalty for violation — immunity from liability.
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50-16-1002. Statement of purpose.
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50-16-1004 through 50-16-1006 reserved.
50-16-1007. Testing — counseling — informed consent — penalty.
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Chapter Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Gunshot or stab wounds to be reported, 37-2-302.

Immunity from liability, 37-2-302.

Report to Department of Justice by physician, 37-2-311.

Physician's immunity from liability, 37-2-312.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of health and environmental sciences.

History: **En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114.**

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of health and environmental sciences, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115.

Part 2

In-Hospital Medical Staff Committees

50-16-201. Data defined. As used in this part, “data” means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information, or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-203. Committee information and proceedings confidential and privileged. All such records, data, and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

Cross-References

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, Montana Rules of Evidence (see Title 26, ch. 10).

50-16-204. Restrictions on use or publication of information. Such in-hospital medical staff committees shall use or publish information from such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3

Confidentiality of Health Care Information (Repealed. Sec. 31, Ch. 632, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

50-16-301. En. Sec. 1, Ch. 578, L. 1979.
50-16-302. En. Sec. 2, Ch. 578, L. 1979.
50-16-303. En. Sec. 6, Ch. 578, L. 1979.
50-16-304. En. Sec. 8, Ch. 578, L. 1979.
50-16-305. En. Sec. 7, Ch. 578, L. 1979.
50-16-306 through 50-16-310 reserved.
50-16-311. En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.
50-16-312. En. Sec. 4, Ch. 578, L. 1979.
50-16-313. En. Sec. 4, Ch. 578, L. 1979.
50-16-314. En. Sec. 5, Ch. 578, L. 1979.

Part 4

Health Information Center

50-16-401. Repealed. Sec. 1, Ch. 66, L. 1987.

History: En. Sec. 1, Ch. 628, L. 1983.

Part 5

Uniform Health Care Information

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".

History: **En. Sec. 1, Ch. 632, L. 1987.**

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

History: **En. Sec. 2, Ch. 632, L. 1987.**

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

History: **En. Sec. 3, Ch. 632, L. 1987.**

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment,

evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

History: En. Sec. 4, Ch. 632, L. 1987.

Cross-References

Government health care information — definition of health care information, 50-16-602.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at ...."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities — confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment: Near end substituted "the surviving spouse, a parent, an adult child, an adult sibling, or any other person" for "persons"; and made minor change in grammar.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment: Near end of first sentence of (2), after "except for", deleted "an agent or employee of the health care provider or" and after "50-16-529" inserted "(1) or".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.

Release of information by physician concerning minor, 41-1-403.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Confidentiality under Tumor Registry Act, 50-15-704.

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987.

Cross-References

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-527. Patient authorization — retention — effective period — exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is claiming benefits.

History: En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) allowing disclosure of health care information by health care provider to insurers of information relating to claimant's condition so long as claimant is receiving benefits. Amendment effective March 27, 1989.

Retroactive Applicability: Section 16, Ch. 333, L. 1989, provided that this section applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained.

History: En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment: In (2), after "delivery of health care", inserted "or to a third-party health care payor who requires health care information"; and made minor change in phraseology.

Cross-References

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536.

History: **En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (5) allowing disclosure without patient's authorization of information under The Crime Victims Compensation Act of Montana upon request by Division of Crime Control. Amendment effective March 13, 1989.

50-16-531 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (1)(j) regarding information requested pursuant to subpoena; inserted (2) regarding disclosure prohibited by law; corrected internal reference; and made minor changes in phraseology and form.

Cross-References

Government health care information — legal proceedings, 50-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535 (1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535 (1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) Where access to health care is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed

the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: **En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (3) regarding denial of access to information in response to compulsory process or discovery requests; inserted (4) relating to court-ordered disclosure; inserted (5) allowing a fee for providing information; and corrected internal references.

50-16-537 through 50-16-540 reserved.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

History: **En. Sec. 13, Ch. 632, L. 1987.**

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: **En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (1)(e) regarding information that might reveal birth out of wedlock.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: **En. Sec. 15, Ch. 632, L. 1987.**

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: **En. Sec. 16, Ch. 632, L. 1987.**

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

History: **En. Sec. 17, Ch. 632, L. 1987.**

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely

presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

History: **En. Sec. 23, Ch. 632, L. 1987.**

Cross-References

Government health care information — penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: **En. Sec. 24, Ch. 632, L. 1987.**

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: **En. Sec. 25, Ch. 632, L. 1987.**

Part 6

Government Health Care Information

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

History: **En. Sec. 1, Ch. 481, L. 1989.**

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease. The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

History: **En. Sec. 2, Ch. 481, L. 1989.**

Cross-References

Uniform health care information — definition of health care information, 50-16-504.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

History: **En. Sec. 3, Ch. 481, L. 1989.**

Cross-References

Uniform health care information, Title 50, ch. 16, part 5.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

History: **En. Sec. 4, Ch. 481, L. 1989.**

50-16-605. Judicial, legislative, and administrative proceedings — testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(7).

History: **En. Sec. 5, Ch. 481, L. 1989.**

Cross-References

Uniform health care information — when available by compulsory process, 50-16-535.

50-16-606 through 50-16-610 reserved.

50-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

History: **En. Sec. 6, Ch. 481, L. 1989.**

Cross-References

Uniform health care information — criminal penalty, 50-16-551.

Part 7

Report of Exposure to Infectious Disease

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report communicable disease, 37-2-301.

50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Health care facility" means a health care facility as defined in 50-5-101.

(3) "Infectious disease" means a communicable disease designated by department rule as transmittable through an unprotected exposure.

(4) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(5) "Unprotected exposure" means exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmission of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient.

History: **En. Sec. 1, Ch. 390, L. 1989.**

50-16-702. Report of unprotected exposure to disease. (1) A report may be filed, as provided in subsection (2), by a person:

(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and

(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.

(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

History: **En. Sec. 2, Ch. 390, L. 1989.**

50-16-703. Notification of precautions after unprotected exposure to infectious disease. (1) After a patient is transported to a health care facility, a physician shall inform the health care facility if:

(a) the physician determines that the transported patient has an infectious disease;

(b) a report of unprotected exposure to that patient has been filed; and

(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis the person who filed the report in 50-16-702 of the disease to which he may have been exposed and the appropriate medical precautions and treatment that the exposed person needs to take.

History: **En. Sec. 3, Ch. 390, L. 1989.**

50-16-704. Confidentiality — penalty for violation — immunity from liability. (1) The names of the person who suffered the unprotected exposure and the person diagnosed as having an infectious disease may not be released to anyone, except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, or a physician may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact a person filing a report of unprotected exposure are unsuccessful.

History: **En. Sec. 5, Ch. 390, L. 1989.**

Cross-References

Physician's immunity from liability, 37-2-312.

50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an unprotected exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an unprotected exposure that must be included in a report of unprotected exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part.

History: **En. Sec. 4, Ch. 390, L. 1989.**

Compiler's Comments

Effective Date: Section 7, Ch. 390, L. 1989, provided: "[Section 4] [codified as 50-16-705] and [this section] are effective on passage and approval." Approved March 30, 1989.

Parts 8 and 9 reserved

Part 10

AIDS Education and Prevention

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform health care information, Title 50, ch. 16, part 5.

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

History: **En. Sec. 1, Ch. 614, L. 1989.**

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

History: **En. Sec. 2, Ch. 614, L. 1989.**

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(5) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(6) "HIV-related test" means a laboratory test, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(7) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(8) "Health care provider" means a physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Person" means an individual, corporation, organization, or other legal entity.

(11) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes written materials provided by the department.

(12) "Pretest counseling" means the provision of written materials to the subject prior to conduct of an HIV test. The written materials must be developed and provided by the department.

(13) "Release of test results" means a written authorization for disclosure of HIV-related test results that is signed and dated and that specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(14) (a) "Written informed consent" means an agreement in writing freely executed by the subject of an HIV-related test or the subject's legal guardian that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time;

(iii) a discussion of whether and to whom the subject's name and test results may be disclosed; and

(iv) a statement that the test may be obtained anonymously if the subject wishes.

(b) The department shall develop a form agreement that may be used for purposes of this subsection.

History: En. Sec. 3, Ch. 614, L. 1989.

50-16-1004 through 50-16-1006 reserved.

50-16-1007. Testing — counseling — informed consent — penalty. (1) A person may not request an HIV-related test without first receiving the written informed consent of the subject of the test or the subject's legal guardian. A health care provider shall certify in writing that informed consent has been received prior to requesting testing. Testing may only be requested by a health care provider.

(2) Prior to executing an informed consent agreement, the subject of the test or the subject's legal guardian must be given pretest counseling.

(3) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform a person who wishes to be tested anonymously that anonymous testing is available at one of the counseling testing sites established by the department.

(4) The results of an HIV-related test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person.

(5) At the time the subject of a test is given the test results, the subject must be provided with posttest counseling.

(6) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(7) Subsections (1) through (5) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(8) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

History: En. Sec. 4, Ch. 614, L. 1989.

50-16-1008. Testing of donors of organs, tissues, and semen required — penalty. (1) Immediately prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

History: En. Sec. 5, Ch. 614, L. 1989.

50-16-1009. Confidentiality of records. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons with whom there has been a contact capable of spreading HIV. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and

may not include the time or place of possible exposure or the identity of the subject of the test.

History: En. Sec. 6, Ch. 614, L. 1989.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of $1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of $5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

History: En. Sec. 7, Ch. 614, L. 1989.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

50-17-101. Policy of state.
50-17-102. Definitions.
50-17-103. Powers and duties of department.
50-17-104. Facilities for diagnosis and treatment of tuberculosis.
50-17-105. Application to require examination or treatment for tuberculosis.
50-17-106. Hearing on the application.
50-17-107. Adjudication of application.
50-17-108. Commitment to hospital on noncompliance with order.
50-17-109. Order of commitment — warrant for transportation.
50-17-110. Confinement in hospital — submission to treatment.
50-17-111. Transfer of person to another hospital.
50-17-112. Procedure to obtain release from commitment.
50-17-113. Voluntary release.
50-17-114. Payment of costs, expenses, and fees.
50-17-115. Emergency detainment — petition — detention.

Part 1

General Provisions

Part Cross-References

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Montana State Hospital, 53-6-301.

Quarantine for tuberculosis control in livestock, Title 81, ch. 2, part 1.

50-17-101. Policy of state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967; R.C.M. 1947, 69-4301; amd. Sec. 1, Ch. 61, L. 1985.

50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis which includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to assure public health and safety as set out in the rules of the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2), (3)En. Sec. 25, Ch. 197, L. 1967; Sec. 69-4302, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4302; amd. Sec. 2, Ch. 61, L. 1985.

50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination and control of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Secs. 26, 27, Ch. 197, L. 1967; amd. Secs. 45, 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4303, 69-4304; amd. Sec. 3, Ch. 61, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department empowered to control communicable diseases, 50-1-202.

50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) The Montana state hospital shall maintain facilities for inhospital treatment of tuberculosis.

(2) The charge for care, treatment, and maintenance at the Montana state hospital shall be at the rate fixed by law.

History: En. Secs. 39, 40, Ch. 197, L. 1967; amd. Secs. 46, 47, Ch. 349, L. 1974; R.C.M. 1947, 69-4316(part), 69-4317; amd. Sec. 9, Ch. 361, L. 1983; amd. Sec. 4, Ch. 61, L. 1985.

Cross-References

Montana State Hospital, Title 53, ch. 6, part 3.

50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis and, if he is found to have tuberculosis, to complete an approved course of treatment; or

(b) enter or return to a hospital for treatment or follow an approved course of treatment outside of a hospital.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis or has been exposed to tuberculosis and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) has tuberculosis and has refused to be treated or to complete an approved course of treatment.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness must be a physician.

History: (1), (2)En. Sec. 28, Ch. 197, L. 1967; Sec. 69-4305, R.C.M. 1947; (3), (4)En. Sec. 29, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4306, R.C.M. 1947; R.C.M. 1947, 69-4305, 69-4306; amd. Sec. 6, Ch. 37, L. 1979; amd. Sec. 5, Ch. 61, L. 1985.

50-17-106. Hearing on the application. The procedure for a hearing on the application is as follows:

(1) A summons stating the time and place of the hearing and a copy of the application are personally served on the person.

(2) The summons, with endorsement of the time of service, is filed with the district court prior to the hearing.

(3) Not fewer than 3 or more than 7 days after service of the summons, a hearing is held in the district court.

(4) The court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967; R.C.M. 1947, 69-4307.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person to enter or return to a hospital for treatment or to follow an approved course of treatment outside of a hospital;

(2) true and order the person to submit to an examination for tuberculosis within a specified time and to complete an approved course of treatment; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967; R.C.M. 1947, 69-4308; amd. Sec. 6, Ch. 61, L. 1985.

50-17-108. Commitment to hospital on noncompliance with order. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set or to complete an approved course of treatment, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967; R.C.M. 1947, 69-4309; amd. Sec. 7, Ch. 61, L. 1985.

Cross-References

Application of Montana Rules of Civil Procedure to commitment proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-17-109. Order of commitment — warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and the department or local board of health and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967; R.C.M. 1947, 69-4310.

50-17-110. Confinement in hospital — submission to treatment. (1) A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged under 50-17-112 or 50-17-113, but he is not required to submit to medical or surgical treatment without his written consent, the consent of his next of kin or guardian if the person is incompetent, or the consent of his parent or guardian if the person is a minor.

(2) The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967; R.C.M. 1947, 69-4311; amd. Sec. 8, Ch. 61, L. 1985.

Cross-References

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Guardianship and conservatorship, Title 72, ch. 5.

50-17-111. Transfer of person to another hospital. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967; R.C.M. 1947, 69-4314.

50-17-112. Procedure to obtain release from commitment. (1) One hundred and eighty days or more after the date of his commitment, a person committed under 50-17-107 or 50-17-108 may apply to the court that ordered his commitment for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court shall hold a hearing.

(3) Following the hearing, the court shall:

(a) order his discharge if it finds he has completed an approved course of treatment or does not have tuberculosis; or

(b) dismiss the request if it finds he still has tuberculosis or he has refused to submit to an examination to determine whether he has tuberculosis or has not yet completed an approved course of treatment.

History: En. Sec. 35, Ch. 197, L. 1967; R.C.M. 1947, 69-4312; amd. Sec. 9, Ch. 61, L. 1985.

50-17-113. Voluntary release. (1) If the person in charge of the hospital and the department or local board that requested commitment concur that a person either does not have tuberculosis or has submitted to an approved course of treatment, the person shall be released from the hospital.

(2) The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967; R.C.M. 1947, 69-4313; amd. Sec. 10, Ch. 61, L. 1985.

50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees shall be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees shall be paid as follows:

(a) to sheriffs and their deputies the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed.

History: (1), (2)En. Sec. 38, Ch. 197, L. 1967; Sec. 69-4315, R.C.M. 1947; (3)En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974; Sec. 69-4316, R.C.M. 1947; R.C.M. 1947, 69-4315, 69-4316(part).

Cross-References

Mileage allowance, 2-18-503, 2-18-504, 3-15-201.

Mileage and expenses of Sheriff, 7-32-2143.

Witness fees, Title 26, ch. 2, part 5.

50-17-115. Emergency detainment — petition — detention. (1) If a physician, the department, or a local health officer reasonably believes that a person has communicable tuberculosis and that he is likely to attempt to leave the jurisdiction to avoid a hearing on commitment to a hospital, the physician, department, or local health officer shall notify the sheriff of the county in which the person is found, who shall cause the person to be detained in a hospital. At least by the next regular business day, the physician, department, or local health officer shall petition for an order from the district court of the county in which the person is found for continued detention of the person and to require examination or treatment for tuberculosis pursuant to 50-17-105. The sheriff must serve the summons required by 50-17-106 on the person the same day the petition is filed.

(2) Immediately after the petition is filed the court will decide whether further emergency detention is required and may order continued hospital detention of the person for no more than 7 days if it finds that the person is an unacceptable danger to the public health and safety in that he probably has communicable tuberculosis and unless detained will probably leave the jurisdiction to avoid a hearing pursuant to this part.

(3) The district court of the county in which the person is found has jurisdiction over the person for the purposes of this section. The district court

may, in the interests of justice, order that jurisdiction over further proceedings be transferred to the district court of the county of the person's residence.

History: **En. Sec. 1, Ch. 460, L. 1989.**

Compiler's Comments

Effective Date: Section 4, Ch. 460, L. 1989, provided that this section is effective April 5, 1989.

CHAPTER 18

SEXUALLY TRANSMITTED DISEASES

Part 1 — General Provisions

50-18-101. Sexually transmitted diseases defined.
50-18-102. Powers and duties of department.
50-18-103. Cooperation with federal agencies — federal funds.
50-18-104. Serological test for syphilis.
50-18-105. Rules of department binding.
50-18-106. Duty to report cases.
50-18-107. Powers and duties of health officers.
50-18-108. Examination and treatment of prisoners.
50-18-109. Permissible release of information concerning infected persons.
50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease.
50-18-111. Certificate of freedom from sexually transmitted disease not to be issued.
50-18-112. Infected person not to expose another to sexually transmitted disease.
50-18-113. Violation a misdemeanor.

Part 1

General Provisions

50-18-101. Sexually transmitted diseases defined. Acquired immunodeficiency syndrome (AIDS), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

History: **En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 1, Ch. 440, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted "Acquired immunodeficiency syndrome (AIDS)" and "chlamydia genital infections"; and in two places substituted "sexually transmitted" for "venereal".

50-18-102. Powers and duties of department. The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose.

History: **En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part); amd. Sec. 2, Ch. 440, L. 1989.**

Compiler's Comments

1989 Amendment: Substituted "sexually transmitted" for "venereal".

50-18-103. Cooperation with federal agencies — federal funds. (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Secs. 98, 99, Ch. 197, L. 1967; amd. Secs. 57, 58, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part), 69-4603; amd. Sec. 3, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In two places substituted "sexually transmitted" for "venereal".

50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter.

History: En. Sec. 107, Ch. 197, L. 1967; R.C.M. 1947, 69-4611; amd. Sec. 1, Ch. 41, L. 1985; amd. Sec. 4, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Deleted former (3) that read: "(3) The department shall destroy the results of a test if an erroneous report is made."

50-18-105. Rules of department binding. Rules adopted by the department of health and environmental sciences for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4616.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Secs. 100, 103, Ch. 197, L. 1967; R.C.M. 1947, 69-4604, 69-4607; amd. Sec. 5, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Deleted former (1) that read: "(1) A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department of health and environmental sciences in the way and on forms provided by the department"; and substituted "a sexually transmitted" for "venereal".

Cross-References

Physicians to report cases of communicable disease, 37-2-301.

50-18-107. Powers and duties of health officers. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of a sexually transmitted disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: En. Sec. 101, Ch. 197, L. 1967; R.C.M. 1947, 69-4605; amd. Sec. 6, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In two places substituted "a sexually transmitted" for "venereal".

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

History: En. Sec. 102, Ch. 197, L. 1967; R.C.M. 1947, 69-4606; amd. Sec. 7, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal"; and made minor change in phraseology.

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

State corrections, Title 53, ch. 30.

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of health and environmental sciences;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of health and environmental sciences or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work, and such personnel are privileged.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4610; amd. Sec. 8, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause of (1) substituted "a sexually transmitted" for "venereal"; inserted (1)(c) regarding a local health officer; inserted (1)(d) authorizing release allowed by Title 50, ch. 16, part 6; in (2) substituted "sexually transmitted" for "venereal" and at end deleted "and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work"; in (3), in two places, substituted "sexually transmitted" for "venereal"; and made minor changes in phraseology.

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of a sexually transmitted disease except upon prescription signed by a person legally authorized to do so by the pharmacy laws of this state.

History: En. Sec. 104, Ch. 197, L. 1967; R.C.M. 1947, 69-4608; amd. Sec. 9, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal" and at end substituted "person legally authorized to do so by the pharmacy laws of this state" for "physician legally authorized to practice medicine in this state".

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

50-18-111. Certificate of freedom from sexually transmitted disease not to be issued. No person shall issue a certificate of freedom from a sexually transmitted disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967; R.C.M. 1947, 69-4609; amd. Sec. 10, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal".

50-18-112. Infected person not to expose another to sexually transmitted disease. A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 11, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "sexually transmitted" for "venereal"; and made minor change in phraseology.

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4617; amd. Sec. 12, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal".

Cross-References

Penalty when none specified, 46-18-212.

CHAPTER 19

PREGNANT WOMEN AND NEWBORN INFANTS

Part 1 — Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions.
50-19-102. Duties of department.
50-19-103. Prenatal blood sample required for serological test.

50-19-104. Approved laboratory to perform syphilis and rubella immunity tests.
50-19-105. Report of positive test results.
50-19-106. Repealed.
50-19-107. Required and permissible exhibit of test results.
50-19-108. Unauthorized divulgence of information a misdemeanor.
50-19-109. Waiver of test by court when contrary to patient's religious creed.
50-19-110. Birth or fetal death certificate to state whether test made.

Part 2 — Metabolic Tests of Infants—Genetics Program

50-19-201. Definitions.
50-19-202. Administration.
50-19-203. Metabolic tests.
50-19-204. Department and Montana developmental center to furnish assistance when requested.
50-19-205 through 50-19-210 reserved.
50-19-211. Voluntary genetics program established.

Part 3 — Montana Initiative for the Abatement of Mortality in Infants

50-19-301. Short title.
50-19-302. Purposes.
50-19-303. Definitions.
50-19-304 through 50-19-310 reserved.
50-19-311. MIAMI project.
50-19-312. Advisory council — powers and duties.
50-19-313 through 50-19-320 reserved.
50-19-321. Contracts for services.
50-19-322. Federal and other aid.
50-19-323. Coordination of programs.

Part 1

Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions. (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: **En. Sec. 1, Ch. 228, L. 1973; amd. Sec. 25, Ch. 187, L. 1977; R.C.M. 1947, 69-6701.**

50-19-102. Duties of department. (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for sexually transmitted diseases for follow-up procedures required by

law or considered necessary by the department for the protection of public health.

History: En. Secs. 3, 7, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(1), (3), 69-6707; amd. Sec. 16, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In (3) substituted "sexually transmitted" for "venereal".

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty to report cases of sexually transmitted diseases, 50-18-106.

50-19-103. Prenatal blood sample required for serological test. (1) Every female, regardless of age or marital status, seeking prenatal care from a physician is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(2) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) Any physician or other person required to take the blood sample who violates this part is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section.

History: En. Sec. 2, Ch. 228, L. 1973; R.C.M. 1947, 69-6702.

Cross-References

Penalty when none specified, 46-18-212.

50-19-104. Approved laboratory to perform syphilis and rubella immunity tests. (1) The tests for syphilis and rubella immunity must be done by the laboratory of the department, a laboratory approved by the department, any other state laboratory, or a United States public health service or armed forces laboratory.

(2) The department may establish a reasonable fee for the tests done by the department laboratory.

History: En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(part); amd. Sec. 1, Ch. 72, L. 1985.

50-19-105. Report of positive test results. All positive laboratory tests for any sexually transmitted diseases must be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

History: En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(2); amd. Sec. 13, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "sexually transmitted" for "venereal"; and made minor change in phraseology.

50-19-106. Repealed. Sec. 5, Ch. 154, L. 1983.

History: En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977; R.C.M. 1947, 69-6704.

50-19-107. Required and permissible exhibit of test results. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973; R.C.M. 1947, 69-6705.

50-19-108. Unauthorized divulgence of information a misdemeanor. Certificates, laboratory statements or reports, or any other matters in this part referred to and the information therein contained shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports without authority to any person not by law entitled to them is guilty of a misdemeanor and may be fined not more than $100.

History: En. Sec. 6, Ch. 228, L. 1973; R.C.M. 1947, 69-6706.

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-19-109. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this part resides may waive the requirements of this part as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the part are contrary to the tenets or practices of the religious creed of which the applicant is an adherent and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973; R.C.M. 1947, 69-6708.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-19-110. Birth or fetal death certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973; R.C.M. 1947, 69-6709.

Part 2

Metabolic Tests of Infants — Genetics Program

50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Newborn" means any infant under 28 days of life.

(3) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

History: En. Sec. 1, Ch. 227, L. 1973; R.C.M. 1947, 69-6710.

50-19-202. Administration. This part shall be administered by the department, and the department may adopt rules for the administration of this part.

History: En. Sec. 3, Ch. 227, L. 1973; R.C.M. 1947, 69-6712.

Cross-References

Adoption of publication of rules, Title 2, ch. 4, part 3.

50-19-203. Metabolic tests. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for or a person responsible for the registration of birth of an infant shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: En. Sec. 2, Ch. 227, L. 1973; R.C.M. 1947, 69-6711.

50-19-204. Department and Montana developmental center to furnish assistance when requested. (1) The department and the staff of the Montana developmental center shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the Montana developmental center.

(3) The department may determine procedures for coordination with the Montana developmental center in providing the services and assistance required in this part.

History: En. Sec. 4, Ch. 227, L. 1973; R.C.M. 1947, 69-6713; amd. Sec. 1, Ch. 151, L. 1985.

Cross-References

Primary function of Montana Developmental Center, 53-20-501.

50-19-205 through 50-19-210 reserved.

50-19-211. Voluntary genetics program established. A voluntary statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

(1) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

(2) comprehensive genetic services to all areas of the state and all segments of the population;

(3) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

(4) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

(a) the nature of genetic processes;

(b) the inheritance patterns of genetic conditions; and

(c) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

History: En. Sec. 1, Ch. 706, L. 1985.

Cross-References

Genetics program fee, 33-2-712.

Group disability policy exemption, 33-2-713.

Part 3

Montana Initiative for the Abatement of Mortality in Infants

Part Compiler's Comments

Appropriation Coordination — Void Without Appropriation: Section 12, Ch. 649, L. 1989, provided: "[This act] is void unless an appropriation for the administration of [this act] is specifically made to the department of health and environmental sciences in House Bill No. 100." The appropriation narrative for item 8, Preventive Health, of the appropriation to the Department of Health and Environmental Sciences in House Bill No. 100 stated that item 8 included an appropriation to fund the MIAMI program.

Effective Date: Section 16, Ch. 649, L. 1989, provided that this part is effective July 1, 1989.

50-19-301. *(Temporary)* **Short title.** This part may be cited as "The Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act". *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 1, Ch. 649, L. 1989.

50-19-302. *(Temporary)* **Purposes.** The purposes of this part are to:

(1) assure that mothers and children, in particular those with low income or with limited availability of health services, receive access to quality maternal and child health services;

(2) reduce infant mortality and the number of low birthweight babies; and

(3) prevent the incidence of children born with chronic illnesses, birth defects, or severe disabilities as a result of inadequate prenatal care. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 2, Ch. 649, L. 1989.

50-19-303. *(Temporary)* **Definitions.** For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 3, Ch. 649, L. 1989.

50-19-304 through 50-19-310 reserved.

50-19-311. *(Temporary)* **MIAMI project.** (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

(a) infant mortality review;

(b) low birthweight prevention;

(c) assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;

(d) referral of low-income women and children to other programs to protect the health of women and children, including:

(i) supplemental food programs for women, infants, and children;

(ii) family planning services; and

(iii) other maternal and child health programs;

(e) public education and community outreach to inform the public on:

(i) the importance of receiving early prenatal care;

(ii) the need for good health habits during pregnancy; and

(iii) the availability of special services for pregnant women and for children. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 4, Ch. 649, L. 1989.

50-19-312. *(Temporary)* **Advisory council — powers and duties.** The council shall:

(1) advise the department on matters relating to administration of the MIAMI project;

(2) review and monitor activities conducted under the project;

(3) gather information relating to infant mortality and low birthweight babies;

(4) identify problems in the quality and availability of maternal and child health services; and

(5) make recommendations to improve maternal and child health services consistent with the purposes of this part. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 6, Ch. 649, L. 1989.

50-19-313 through 50-19-320 reserved.

50-19-321. *(Temporary)* **Contracts for services.** (1) The department shall contract with service providers to provide services under the MIAMI project.

(2) In selecting service providers, the department shall take into consideration the past performance of the person, agency, or organization in providing similar services, the demonstrated effectiveness of the service provider in delivering comparable or related services, the fiscal accountability of the service provider, and such other factors as the department determines to be appropriate. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 7, Ch. 649, L. 1989.

50-19-322. *(Temporary)* **Federal and other aid.** (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 8, Ch. 649, L. 1989.

50-19-323. *(Temporary)* **Coordination of programs.** The department shall coordinate services under the MIAMI project with other services and programs in the state including:

(1) the early and periodic screening, diagnosis, and treatment services program under Title XIX of the federal Social Security Act;

(2) the Montana medicaid program established in 53-6-101; and

(3) programs administered with funds under the federal Maternal and Child Health Services Block Grant Act, Public Law 97-35, as may be amended. *(Terminates June 30, 1991—sec. 15, Ch. 649, L. 1989.)*

History: En. Sec. 9, Ch. 649, L. 1989.

CHAPTER 20

ABORTION

Part 1 — Montana Abortion Control Act

50-20-101. Short title.
50-20-102. Statement of purpose.
50-20-103. Legislative intent.
50-20-104. Definitions.
50-20-105. Duties of department.
50-20-106. Consent to abortion.
50-20-107. Written notice to spouse or parent required.
50-20-108. Protection of premature infants born alive.
50-20-109. Control of practice of abortion.
50-20-110. Reporting of practice of abortion.
50-20-111. Right to refuse participation in abortion.
50-20-112. Penalties.

Part 1

Montana Abortion Control Act

Part Cross-References

Rights of unborn, 41-1-103.

50-20-101. Short title. This chapter shall be known and may be cited as the "Montana Abortion Control Act".

History: En. 94-5-613 by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, 94-5-613.

50-20-102. Statement of purpose. The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, 94-5-614.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, 94-5-623.

50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(4) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; R.C.M. 1947, 94-5-615(part).

50-20-105. Duties of department. (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

History: (1)En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; Sec. 94-5-617, R.C.M. 1947; (2)En. 94-5-621 by Sec. 9, Ch. 284, L. 1974; Sec. 94-5-621, R.C.M. 1947; (3)En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; Sec. 94-5-619, R.C.M. 1947; R.C.M. 1947, 94-5-617(4), 94-5-619(6), 94-5-621.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of Attorney General, 2-15-501.

50-20-106. Consent to abortion. (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies

that he has made the full disclosure provided in 50-20-104(3) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency, or public employee of the state or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsections (1) and (4) of this section is a misdemeanor.

History: (1), (3) thru (5)En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; Sec. 94-5-616, R.C.M. 1947; (2)En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; Sec. 94-5-615, R.C.M. 1947; R.C.M. 1947, 94-5-615(part), 94-5-616(part).

Cross-References

Penalty for misdemeanor, 50-20-112.

50-20-107. Written notice to spouse or parent required. (1) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.

(2) Violation of this section is a misdemeanor.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; R.C.M. 1947, 94-5-616(part).

Cross-References

Penalty for misdemeanor, 50-20-112.

50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; R.C.M. 1947, 94-5-617(1) thru (3), (5); amd. Sec. 9, Ch. 610, L. 1987.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Penalty for felony, 50-20-112.

50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(37). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974; amd. Sec. 20, Ch. 359, L. 1977; R.C.M. 1947, 94-5-618; amd. Sec. 7, Ch. 485, L. 1981.

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty for felony, 50-20-112.

Penalty for misdemeanor, 50-20-112.

50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified

by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

History: En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 94-5-619(1) thru (5); amd. Sec. 10, Ch. 228, L. 1981.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-20-111. Right to refuse participation in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284, L. 1974; R.C.M. 1947, 94-5-620.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-20-112. Penalties. (1) A person convicted of deliberate, mitigated, or negligent homicide under this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

(2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-622 by Sec. 10, Ch. 284, L. 1974; amd. Sec. 14, Ch. 338, L. 1977; R.C.M. 1947, 94-5-622; amd. Sec. 10, Ch. 610, L. 1987.

CHAPTER 21

CADAVERS AND AUTOPSIES

Part 1 — General Provisions

50-21-101. Procurement of cadavers.
50-21-102. Procedure to procure cadavers.
50-21-103. Limitations on right to perform autopsy or dissection.
50-21-104. Autopsies.
50-21-105. Morticians not affected.
50-21-106. Penalty for unauthorized post-mortem examinations.

Part 1

General Provisions

Part Cross-References

Disposition and removal of remains, Title 35, ch. 21, part 3.

Provisions relating to corpses, Title 44, ch. 3, part 4.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-21-101. Procurement of cadavers. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967; R.C.M. 1947, 69-5101.

50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of health and environmental sciences showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body shall be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: En. Sec. 154, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5102.

Cross-References

Provisions relating to corpses, Title 44, ch. 3, part 4.

Burial permit, 50-15-405.

50-21-103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, dissect a human body, or make any post-mortem examination involving dissection of any part of a body is limited to cases where:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States veterans administration, Montana school for the deaf and blind, or an institution in the department of institutions leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the

purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: En. Sec. 155, Ch. 197, L. 1967; R.C.M. 1947, 69-5103.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

50-21-104. Autopsies. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy; upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital or skilled nursing facility; to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973; R.C.M. 1947, 69-5104.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Exemption from liability for autopsy, 44-3-401.

50-21-105. Morticians not affected. This chapter shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: En. Sec. 157, Ch. 197, L. 1967; R.C.M. 1947, 69-5105.

Cross-References

Licensing of morticians, Title 37, ch. 19, part 3.

50-21-106. Penalty for unauthorized post-mortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding $500.

History: En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.

Cross-References

Penalty for disturbing corpse, 44-3-404.

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

50-22-101. Determination of death.

Part 1

General Provisions

50-22-101. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.

History: En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201; amd. Sec. 1, Ch. 86, L. 1983.

Cross-References

Requirement that devisee survive testator, 72-2-511.

Uniform Anatomical Gift Act, Title 72, ch. 17.

CHAPTER 23

RABIES CONTROL

Part 1 — Restrictions on Possession of Wild Animals

50-23-101. Definitions.
50-23-102. Prohibition of possession of wild animals — exceptions.
50-23-103. Quarantine — destruction — testing.
50-23-104. Payment of expenses.
50-23-105. Authority to adopt rules.
50-23-106. Injunction — recovery of costs.

Part 1

Restrictions on Possession of Wild Animals

Part Cross-References

Ownership of wild animals, 70-2-111.

50-23-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department of health and environmental sciences" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of health and environmental sciences with the approval of the department of livestock.

History: En. Sec. 1, Ch. 448, L. 1981.

50-23-102. Prohibition of possession of wild animals — exceptions. No person may possess a wild animal unless he possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in such a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research.

History: En. Sec. 2, Ch. 448, L. 1981.

Cross-References

Property rights in wild and fur-bearing animals, 70-2-111.

50-23-103. Quarantine — destruction — testing. (1) Whenever a person unlawfully possesses a wild animal, the department of health and environmental sciences or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality of contracting rabies, the animal may be impounded by the department of health and environmental sciences, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid shall be returned to its owner.

History: En. Sec. 3, Ch. 448, L. 1981.

50-23-104. Payment of expenses. Expenses incurred by the state under 50-23-103 must be paid by the person from whom possession of the wild animal was taken.

History: En. Sec. 4, Ch. 448, L. 1981.

50-23-105. Authority to adopt rules. The department of health and environmental sciences, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part.

History: En. Sec. 5, Ch. 448, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-23-106. Injunction — recovery of costs. (1) In addition to any other remedies provided by law, the department of health and environmental sciences or, upon the request of the department of health and environmental sciences, an appropriate county attorney may file an action to enjoin a violation of this part or rule adopted pursuant to it.

(2) The department of health and environmental sciences or the county attorney, if either prevails in any action brought pursuant to (1) above, is entitled to recover from the other party the costs, expenses, and reasonable attorney's fees incurred.

History: En. Sec. 6, Ch. 448, L. 1981.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Costs, Title 25, ch. 10.

Injunctions, Title 27, ch. 19.

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

CONSUMER PRODUCT SAFETY ACT

Part 1 — General Provisions

50-30-101. Short title.
50-30-102. Definitions.
50-30-103. Department authorized to adopt rules.
50-30-104. Department to develop accident prevention and health oriented education programs.
50-30-105. Publication of information by department.
50-30-106. Department to conduct investigations.
50-30-107. Powers and duties of department's agents.
50-30-108. Carriers to permit inspection.

Part 2 — Hazardous Substances

50-30-201. Hazardous substance defined.
50-30-202. Misbranded hazardous substance defined.
50-30-203. Banned hazardous substance defined.
50-30-204. Toxic defined.
50-30-205. Highly toxic defined.
50-30-206. Corrosive defined.
50-30-207. Irritant defined.
50-30-208. Strong sensitizer defined.
50-30-209. Extremely flammable, flammable, and combustible defined.
50-30-210. Radioactive substance defined.
50-30-211. Label defined.
50-30-212. Electrical hazards.
50-30-213. Mechanical hazards.
50-30-214. Thermal hazards.
50-30-215. Declaration of hazardous substance.
50-30-216. Additional labeling requirements.
50-30-217. Exemption from labeling requirements.
50-30-218. When labeling requirement complied with.
50-30-219. Ban of hazardous substance authorized.
50-30-220. Toys and other children's articles.

Part 3 — Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.
50-30-302. Notice and hearing required prior to prosecution.
50-30-303. Department and county attorney to prosecute violations.
50-30-304. Penalty.
50-30-305. Exceptions to penalty.
50-30-306. Injunction authorized.
50-30-307. Detainer of misbranded or banned hazardous substance.

Chapter Cross-References

Warranty provisions under the Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

State correctional policy, 46-18-101.

Hazardous waste management, Title 75, ch. 10, part 4.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer; regulation of itinerant produce merchants and produce wholesalers; and inspection, grading, and packing of apples, Title 80, ch. 3, 4, 5, 9, and 10.

Montana quality labels; regulation of poultry, eggs, and egg dealers; and regulation of manufactured dairy products, Title 81, ch. 8, 20, and 22.

Part 1

General Provisions

50-30-101. Short title. This chapter shall be cited as the "Montana Consumer Product Safety Act of 1975".

History: En. 69-7101 by Sec. 2, Ch. 394, L. 1975; R.C.M. 1947, 69-7101.

50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(1) thru (3), (18).

50-30-103. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this chapter is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: En. 69-7109 by Sec. 9, Ch. 394, L. 1975; R.C.M. 1947, 69-7109.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-104. Department to develop accident prevention and health oriented education programs. The department, in cooperation with other state and federal agencies, shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage, and transportation of hazardous substances and the proper medical and first-aid procedures for accidents resulting from hazardous substances.

History: En. 69-7112 by Sec. 12, Ch. 394, L. 1975; R.C.M. 1947, 69-7112.

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. 69-7113 by Sec. 13, Ch. 394, L. 1975; R.C.M. 1947, 69-7113.

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-106. Department to conduct investigations. (1) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 50-30-201(1)(a), intended or suitable for use by the general public.

(2) Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this chapter.

(3) If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(3).

Cross-References

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct investigations on hazardous wastes, 75-10-404.

Montana Pesticides Act, Title 80, ch. 8.

50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(1), (2).

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-30-108. Carriers to permit inspection. (1) For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances, the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

(2) It is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates, provided that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained.

(3) Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975; R.C.M. 1947, 69-7111.

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Transportation of hazardous substances by railroads, 69-14-562.

Department to require recordkeeping by transporters of hazardous wastes, 75-10-405.

Part 2

Hazardous Substances

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Montana Pesticides Act, Title 80, ch. 8.

50-30-201. Hazardous substance defined. (1) "Hazardous substance" means:

(a) a substance or mixture of substances which:

(i) is toxic;

(ii) is corrosive;

(iii) is an irritant;

(iv) is a strong sensitizer;

(v) is flammable or combustible; or

(vi) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(b) substances which the department by rule finds under 50-30-215 meet the requirements of subsection (1)(a) of this section;

(c) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health; or

(d) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard as determined by the department by rule in accordance with 50-30-220.

(2) (a) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house.

(b) The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (1) of this section by reason of bearing or containing a pesticide.

(c) The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(3) The term "hazardous substance" does not include source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(4).

Cross-References

Nuclear regulation, Title 75, ch. 3.

50-30-202. Misbranded hazardous substance defined. (1) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 50-30-216 or 50-30-217, fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 50-30-216 or 50-30-217;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by 50-30-205; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (1)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(2) The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug, and Cosmetic Act.

History: (1)En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; Sec. 69-7102, R.C.M. 1947; (2)En. 69-7104 by Sec. 4, Ch. 394, L. 1975; Sec. 69-7104, R.C.M. 1947; R.C.M. 1947, 69-7102(13), 69-7104(part).

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-203. Banned hazardous substance defined. (1) "Banned hazardous substance" means:

(a) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(b) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(2) The department by rule shall exempt from subsection (1)(a) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling

giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(3) Proceedings for the issuance, amendment, or repeal of rules under subsections (1)(b) and (2) of this section shall be governed by the provisions of 50-30-219 and 50-30-220.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(14).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-204. Toxic defined. "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(5).

50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance which falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(6).

50-30-206. Corrosive defined. "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(7).

50-30-207. Irritant defined. "Irritant" means a substance not corrosive within the meaning of 50-30-206 which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(8).**

50-30-208. Strong sensitizer defined. "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(9).**

50-30-209. Extremely flammable, flammable, and combustible defined. (1) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the Tagliabue open cup tester.

(2) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the Tagliabue open cup tester.

(3) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the Tagliabue open cup tester.

(4) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(10).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-210. Radioactive substance defined. "Radioactive substance" means a substance which emits ionizing radiation.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(11).**

Cross-References

Nuclear regulation, Title 75, ch. 3.

50-30-211. Label defined. "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).**

Cross-References

Labeling of flour, 30-12-302.

Agricultural seed labeling, Title 80, ch. 5, part 1.

Montana quality label, Title 81, ch. 8, part 7.

50-30-212. Electrical hazards. An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(15).

50-30-213. Mechanical hazards. An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;
(2) from propulsion of the article (or a part or accessory thereof);
(3) from points or other protrusions, surfaces, edges, openings, or closures;
(4) from moving parts;
(5) from lack or insufficiency of controls to reduce or stop motion;
(6) as a result of self-adhering characteristics of the article;
(7) because the article (or a part or accessory thereof) may be aspirated or ingested;
(8) because of instability; or
(9) because of any other aspect of the article's design or manufacture.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(16).

50-30-214. Thermal hazards. An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(17).

50-30-215. Declaration of hazardous substance. When in the judgment of the department such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of 50-30-201(1)(a).

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-216. Additional labeling requirements. If the department finds that the requirements of 50-30-202(1)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-217. Exemption from labeling requirements. If the department finds that because of the size of the package involved, because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-218. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(1) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(2) on all accompanying literature where there are directions for use, written or otherwise.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-219. Ban of hazardous substance authorized. If the department finds that the hazard of an article subject to this chapter is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(4).

Cross-References

"Banned hazardous substance" defined, 50-30-203.

50-30-220. Toys and other children's articles. (1) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this chapter.

(2) If, before or during a proceeding under subsection (1) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent

hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(3) (a) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(b) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(c) Upon the filing of the petition under subsection (3) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (3)(b) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (3)(a) and (3)(b) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (3) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Electrical hazard, 50-30-212.

Mechanical hazard, 50-30-213.

Thermal hazard, 50-30-214.

Part 3

Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect

to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), which guarantee or undertaking is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process which as a trade secret is entitled to protection.

History: En. 69-7104 by Sec. 4, Ch. 394, L. 1975; R.C.M. 1947, 69-7104(part); amd. Sec. 7, Ch. 37, L. 1979.

Cross-References

"Misbranded hazardous substance" defined, 50-30-202.

"Banned hazardous substance" defined, 50-30-203.

50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Office of County Attorney, Title 7, ch. 4, part 27.

50-30-303. Department and county attorney to prosecute violations. It is the duty of the department or the county attorney to whom the department reports a violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References
Duty of County Attorney in state matters, 7-4-2716.

50-30-304. Penalty. A person who violates the provisions of 50-30-301 is guilty of a misdemeanor and shall be fined no more than $500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than $3,000, or both.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(1).

Cross-References
Liability for damages for deceit, 27-1-712.

50-30-305. Exceptions to penalty. No person is subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(2) for having violated 50-30-301(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(2).

Cross-References
"Misbranded hazardous substance" defined, 50-30-202.
"Banned hazardous substance" defined, 50-30-203.

50-30-306. Injunction authorized. In addition to the remedies hereinafter provided, the department is authorized to apply to court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-30-301, irrespective of whether or not there exists an adequate remedy at law.

History: En. 69-7106 by Sec. 6, Ch. 394, L. 1975; R.C.M. 1947, 69-7106.

Cross-References
Injunctions, Title 27, ch. 19.

50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977; R.C.M. 1947, 69-7107.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

CHAPTER 31

MONTANA FOOD, DRUG, AND COSMETIC ACT

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Chapter Cross-References

Control of food and other commodities during an emergency, 10-3-505.

Warranty provisions under the Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer — regulation of itinerant produce merchants and produce wholesalers — inspection, grading, and packing of apples, Title 80, ch. 3, 4, 9, and 10.

Montana quality labels — regulation of poultry, eggs, and egg dealers — regulation of manufactured dairy products, Title 81, ch. 8, 20, and 22.

Part 1

General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec.1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.

(14) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point

of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are three grades of hamburger or ground beef:

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

(25) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means any facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device utilizing external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979; amd. Sec. 1, Ch. 361, L. 1981; amd. Sec. 1, Ch. 605, L. 1985; amd. Sec. 1, Ch. 169, L. 1989; amd. Sec. 4, Ch. 472, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 169 inserted definitions of approved source, artesian water, bottled water, carbonated water, demineralized water, distilled water, drinking water, fluoridated water, mineral water, purified water, spring water, water-bottling plant, and well water; and made minor change in grammar.

Chapter 472 corrected internal reference in definition of consumer commodity; and made minor changes in phraseology. Amendment effective April 8, 1989.

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Refusal to allow entry or inspection prohibited, 50-31-501.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(l), 27-720(a).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Specific drug advertisements considered false, 50-31-303.

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).

Cross-References

Misbranding drugs or devices, 50-31-306.

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).

50-31-110. Certain agricultural chemicals not color additives. Subsections (7) and (8) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3); amd. Sec. 3, Ch. 361, L. 1981; amd. Sec. 5, Ch. 169, L. 1989.

Compiler's Comments

1989 Amendment: At beginning substituted reference to subsections (7) and (8) of 50-31-103 for reference to subsections (3) and (4) of 50-31-103.

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: **En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.**

Cross-References

Agricultural seed labeling, Title 80, ch. 5, part 1.

Part 2

Food and Bottled Water

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

Control of food and other commodities during an emergency, 10-3-505.

Immunity of persons donating food for free distribution, 27-1-716.

Supervision and regulation of the milk industry, Title 81, ch. 23, parts 1 through 4.

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: **En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710.

Cross-References

Deceptive business practices, 45-6-318.

Montana Pesticides Act, Title 80, ch. 8.

50-31-203. When food misbranded. A food shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to such definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) it is not subject to the provisions of subsection (7) of this section unless it bears labeling clearly giving:

(a) the common or usual name of the food, if any there be; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of subsection (9)(b) is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department; and provided further that the requirements of subsection (9)(b) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; provided that the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as defined in 81-22-101 shall be exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222.

History: En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711; amd. Sec. 2, Ch. 605, L. 1985.

Cross-References

Deceptive business practices, 45-6-318.

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Deceptive business practices, 45-6-318.

Labeling violations penalties, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-205. Permits for manufacture, processing, and packing of foods. (1) Whenever the department finds after investigation that the distribution in Montana of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health.

(2) After the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-206. Permitholder to allow inspections. Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-31-207. Suspension of permit. The department is authorized to suspend immediately upon notice any permit issued under authority of 50-31-205 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).

50-31-208. Sale of hamburger and beef patty mix. (1) No food service establishment or retail establishment may use the terms “hamburger”, “burger”, or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as “beef patty mix” or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103(24), and the maximum fat content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.

History: En. Sec. 5, Ch. 456, L. 1979; amd. Sec. 2, Ch. 361, L. 1981; amd. Sec. 6, Ch. 169, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning of (3) changed "50-31-103(16)" to "50-31-103(24)".

Cross-References

Penalties for violation, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-209 through 50-31-220 reserved.

50-31-221. Short title. Sections 50-31-221 through 50-31-223 and 50-31-231 may be cited as the "Montana Truth in Labeling Act for Organic Foods".

History: En. Sec. 3, Ch. 605, L. 1985.

50-31-222. Organic food defined. Organic food is food that:

(1) was produced, harvested, cleaned, stored, distributed, processed, and packaged without application of synthetically compounded fertilizers, pesticides, herbicides, fungicides, growth regulators, aromatic petroleum solvents, diesel and other petroleum fractions, or other synthetically compounded substances, and without being preserved by irradiation;

(2) was produced, harvested, cleaned, stored, distributed, processed, and packaged with application of only microorganisms, microbiological products, and materials consisting of or derived or extracted solely from plant, animal, or mineral-bearing rock substances, including but not limited to Bordeaux mixtures and trace elements, soluble kelp, lime, sulfur, gypsum, dormant oils, summer oils, fish emulsion, soap, green manure, compost, and animal manures, and ascorbic acid, sodium ascorbate, calcium ascorbate, and citric acid used in processing;

(3) contains no added coloring or synthetically compounded material;

(4) does not contain pesticide residue in excess of 10% of the level regarded as safe by the U.S. food and drug administration;

(5) in the case of perennial crops, was grown in fields to which no synthetically compounded substances were applied for 24 months before the appearance of flower buds and throughout the entire growing and harvesting season of the crop;

(6) in the case of annual crops and 2-year crops, was grown in fields to which no synthetically compounded substances or growth regulators were applied for 24 months before planting or transplanting and throughout the entire growing and harvesting season of the crop;

(7) in the case of meat, poultry, or fish, was raised for at least the final 60% of its life:

(a) on food produced in conformity with subsection (5) or (6);

(b) without the use of any chemical or drug to stimulate or regulate growth or tenderness; and

(c) without any drug or antibiotic administered or introduced by injection or ingestion, except for treatment of a specific disease or malady not less than 90 days before the slaughter of such animal, bird, or fish; and

(8) in the case of milk or eggs, was produced by animals raised in accordance with subsection (7) except that no chemical, drug, or antibiotic was administered or introduced less than 30 days before the production of such milk or eggs.

History: En. Sec. 4, Ch. 605, L. 1985.

Cross-References

"Processing" and "synthetically compounded" defined, 50-31-103.

50-31-223. Requirements for labeling. (1) No claim or implication may be made in the labeling, advertising, or promotion of raw or processed food products, meat, fish, poultry, milk, eggs, or seeds that the food is organic, organically grown, naturally grown, ecologically grown, or biologically grown unless it conforms to the definition set forth in 50-31-222.

(2) Packaged organic food must be labeled as follows, or with substantially similar language: "ORGANIC FOOD AS DEFINED IN MONTANA LAW (50-31-222, MCA)".

History: En. Sec. 5, Ch. 605, L. 1985.

50-31-224 through 50-31-230 reserved.

50-31-231. Injunctive relief. (1) In addition to the remedies provided in 50-31-509, any person may bring an action in district court pursuant to this section, and the district court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-223. The court may award attorney fees to the prevailing party in the action.

(2) The prohibition provided in 50-31-223 does not apply to any wholesale or retail distributor who in good faith makes the same representations on a package or label or in advertising or promotion as have been made by the manufacturer, distributor, or other person providing the food to that wholesale or retail distributor.

History: En. Sec. 6, Ch. 605, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-232 through 50-31-235 reserved.

50-31-236. Labeling requirements for bottled water. (1) A person may not sell, deliver, offer for sale, hold for sale, or give away bottled water unless it conforms to and is labeled in compliance with the following standards:

(a) bottled mineral water must be labeled "mineral water" or "natural mineral water";

(b) bottled water that contains naturally occurring carbon dioxide that emerges from the water and is bottled directly with its entrapped gas or that has been mechanically separated from and subsequently reintroduced into the water at a level not higher than that naturally occurring in the water must be labeled "naturally carbonated water" or "naturally sparkling water". Bottled water that contains carbon dioxide from a source that is not naturally occurring may not be labeled with the word "naturally".

(c) bottled artesian water may be labeled "artesian well water", "natural artesian water", or "natural well water";

(d) bottled spring water may be labeled "spring water" or "natural spring water";

(e) bottled well water may be labeled "well water" or "natural well water";

(f) bottled purified water must be labeled "purified water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled purified water produced by distillation may be labeled "distilled water".

(g) bottled demineralized water that is not purified water must be labeled "demineralized water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled demineralized water produced by distillation may be labeled "distilled water".

(h) bottled drinking water must be labeled "drinking water";

(i) bottled fluoridated water must specify on the label whether the fluoride is naturally occurring or added;

(j) unless the water is in fact spring water, language containing the word "spring" or "springs" may not be used as a brand name on the label or in words describing the bottled water.

(2) A product meeting more than one definition may be labeled with any of the definitions with which it complies.

History: **En. Sec. 2, Ch. 169, L. 1989.**

50-31-237. Health claims for bottled water. Claims of medicinal or health-giving properties on labels or in advertisements for bottled water are prohibited.

History: **En. Sec. 3, Ch. 169, L. 1989.**

50-31-238. Misrepresentation of a company name. A bottler, distributor, or vendor of bottled water whose company name or trademark contains the words "spring", "springs", "well", "artesian well", "mineral", or any derivative of those words shall label each bottle with the company's brand name or trademark and, if the source of the bottled water is different from the source stated in the company name, the source of the water. This information must be in typeface at least equal to the size of the typeface of the company name or trademark.

History: **En. Sec. 4, Ch. 169, L. 1989.**

Part 3

Drugs and Devices

Part Cross-References

Dangerous drugs, Title 45, ch. 9.

Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Controlled substances, Title 50, ch. 32.

50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(4) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(5) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label whether or not he is the manufacturer of the drug.

(6) "Solid dosage form" means capsules or tablets intended for oral use.

(7) "Legend drug" means any drug defined by section 503(b) of the federal Food, Drug and Cosmetic Act, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979; amd. Sec. 1, Ch. 95, L. 1981; amd. Sec. 1, Ch. 239, L. 1983.

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).

50-31-303. Certain drug advertisements considered false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or a sexually transmitted disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979; amd. Sec. 17, Ch. 440, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "a sexually transmitted" for "venereal".

Cross-References

Advertising drug paraphernalia prohibited, 45-10-106.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.

Cross-References

Use of additives, 50-31-109.

50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by man that falls in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling any written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a); amd. Sec. 3, Ch. 472, L. 1989.

Compiler's Comments

1989 Amendment: At end of introductory clause of (1) substituted "that falls in one of the categories in subsection (2) may be dispensed only" for "which"; deleted former (1)(a), (1)(b), and part of (1)(c) that read: "(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only"; inserted (2) specifying what drugs must be dispensed according to subsection (1); inserted (3) allowing dispensing of oral contraceptives under certain circumstances; and made minor changes in phraseology and form. Amendment effective April 8, 1989.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

Distribution or sale of DMSO for human use, 50-42-102.

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-310. Narcotic and marihuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana, as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).

Cross-References

Offenses involving dangerous drugs, Title 45, ch. 9.

50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, no person may sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or

(b) when not subject to the federal act, such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof and, prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(i) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(ii) a full list of the articles used as components of such drug;

(iii) a full statement of the composition of such drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(v) such samples of such drug and of the articles used as components thereof as the department may require; and

(vi) specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 180th day after the filing thereof, except that, if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c); amd. Sec. 1, Ch. 333, L. 1981.

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30) shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979; amd. Sec. 7, Ch. 169, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning of (2) and in (2)(b) substituted "50-31-103(30)" for "50-31-103(21)".

50-31-313. Code imprint required on legend drugs. No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

History: **En. Sec. 2, Ch. 95, L. 1981.**

Cross-References

Penalty for violation, 50-31-506.

50-31-314. Exemptions from code imprint requirement. The board of pharmacy may grant exemptions from the requirements of 50-31-313 and 50-31-315 upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of 50-31-313 impractical or impossible. Any exemption granted must be included in the list required by 50-31-315 and must describe the physical characteristics and type of drug covered by the exemption.

History: **En. Sec. 3, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.**

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-31-315. List of code imprints to be provided. Upon request of the board of pharmacy, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

History: **En. Sec. 4, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.**

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

Penalty for violation, 50-31-506.

Part 4

Cosmetics

Part Cross-References

Licensing of cosmetologists, Title 37, ch. 31.

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: **En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).**

Cross-References

Use of additives, 50-31-109.

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Subsection 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to such drug of any representation or suggestion that an application with respect to such drug is effective under 50-31-311 or that such drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (13) hereof;

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to

defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(16) the using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16).

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Deceptive business practices, 45-6-318.

Alteration of dangerous drug labels unlawful — penalty, 45-9-105, 45-9-106.

Penalties, 50-31-506.

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Labeling requirements, 50-31-204.

Penalties, 50-31-506.

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Duties of Attorney General, 2-15-501.

Duty of County Attorney in state matters, 7-4-2716.

50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-208, 50-31-313, 50-31-315, 50-31-501, or 50-31-502 is guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979; amd. Sec. 5, Ch. 95, L. 1981.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Unauthorized sale or distribution of DMSO for human use, 50-42-102.

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-208, 50-31-501, or 50-31-502, irrespective of whether or not there exists an adequate remedy at law.

History: En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3); amd. Sec. 1, Ch. 158, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).

CHAPTER 32

CONTROLLED SUBSTANCES

Part 1 — General Provisions

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50-32-301. Annual registration required for manufacturer, distributor, or dispenser.
50-32-302. Exceptions to registration requirement.
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50-32-311. Revocation or suspension of registration.
50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration.
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50-32-401. Report required for precursor to controlled substance.
50-32-402. Reports required — exceptions.
50-32-403. Common reporting form.
50-32-404. Loss, theft, or other discrepancy to be reported.
50-32-405. Violation — penalties.

Chapter Cross-References

Dangerous Drug Tax Act, Title 15, ch. 25.

Dangerous drugs, Title 45, ch. 9.

Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Part 1

General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Drug" does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance which the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) "Manufacture" does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in (18)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(19) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum 1., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(24) The term "prescription" is given the meaning it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

History: **En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981; amd. Sec. 1, Ch. 155, L. 1983; amd. Sec. 1, Ch. 247, L. 1983.**

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: **En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.**

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: **En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: **En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).**

Cross-References

Control of liquor, beer, and wine, Title 16, ch. 3.

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: **En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).**

Cross-References

Teachers required to complete course in drug and alcohol abuse, 20-25-603.

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).

Part 2

Scheduling of Dangerous Drugs

Part Cross-References

Municipal powers regarding sale and use of opium and opium products, 7-31-4102.

Regulation of the dispensing of drugs by practitioners, Title 37, ch. 2, part 1.

Offenses involving dangerous drugs, Title 45, ch. 9.

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

Cross-References

Criminal possession of precursors to dangerous drugs, 45-9-107.

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6); amd. Sec. 5, Ch. 472, L. 1989.

Compiler's Comments

1989 Amendment: Corrected internal reference; and made minor change in phraseology. Amendment effective April 8, 1989.

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: **En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.**

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: **En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.**

50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: **En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981.**

Cross-References

Regulation of sale of drugs and medicine by Board of Pharmacy, 32-7-201.

Regulation of prescriptions, Title 37, ch. 7, part 4.

50-32-209. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually. For the purposes of this section, the mandate to republish may be satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: **En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981.**

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetylmethadol;
(b) allylprodine;
(c) alphacetylmethadol;
(d) alphameprodine;
(e) alphamethadol;
(f) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(g) benzethidine;
(h) betacetylmethadol;
(i) betameprodine;
(j) betamethadol;
(k) betaprodine;
(l) clonitazene;
(m) dextromoramide;
(n) diampromide;
(o) diethylthiambutene;
(p) difenoxin;
(q) dimenoxadol;
(r) dimepheptanol;
(s) dimethylthiambutene;
(t) dioxaphetyl butyrate;
(u) dipipanone;
(v) ethylmethylthiambutene;
(w) etonitazene;
(x) etoxeridine;
(y) furethidine;
(z) hydroxypethidine;
(aa) ketobemidone;
(bb) levomoramide;
(cc) levophenacylmorphan;
(dd) morpheridine;
(ee) noracymethadol;
(ff) norlevorphanol;
(gg) normethadone;
(hh) norpipanone;
(ii) phenadoxone;
(jj) phenampromide;

(kk) phenomorphan;
(ll) phenoperidine;
(mm) piritramide;
(nn) proheptazine;
(oo) properidine;
(pp) propiram;
(qq) racemoramide;
(rr) sufentanil;
(ss) tilidine; and
(tt) trimeperidine.

(2) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;
(b) acetyldihydrocodeine;
(c) benzylmorphine;
(d) codeine methylbromide;
(e) codeine-n-oxide;
(f) cyprenorphine;
(g) desomorphine;
(h) dihydromorphine;
(i) drotebanol;
(j) etorphine;
(k) heroin;
(l) hydromorphinol;
(m) methyldesorphine;
(n) methyldihydromorphine;
(o) morphine methylbromide;
(p) morphine methylsulfonate;
(q) morphine-n-oxide;
(r) myrophine;
(s) nicocodeine;
(t) nicomorphine;
(u) normorphine;
(v) pholcodine; and
(w) thebacon.

(3) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 3,4-methylenedioxy amphetamine;
(b) 5-methoxy-3,4-methylenedioxy amphetamine;
(c) 3,4,5-trimethoxy amphetamine;
(d) bufotenine;
(e) diethyltryptamine;
(f) dimethyltryptamine;
(g) 4-methyl-2,5-dimethoxy-amphetamine;
(h) ibogaine;

(i) lysergic acid diethylamide;
(j) marihuana;
(k) mescaline;
(l) peyote;
(m) n-ethyl-3-piperidyl benzilate;
(n) n-methyl-3-piperidyl benzilate;
(o) psilocybin;
(p) psilocyn;
(q) tetrahydrocannabinols;
(r) 2,5-dimethoxyamphetamine;
(s) 4-bromo-2,5-dimethoxy-amphetamine;
(t) 4-methoxyamphetamine;
(u) ethylamine analog of phencyclidine;
(v) pyrrolidine analog of phencyclidine; and
(w) thiophene analog of phencyclidine.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone.

(5) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) fenethylline; and
(b) n-ethylamphetamine.

(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers.

(7) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (3) shall automatically be rescheduled from Schedule I to Schedule II.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979; amd. Sec. 1, Ch. 141, L. 1983.

Cross-References
Dangerous Drug Tax Act, Title 15, ch. 25.
Criminal sale of dangerous drugs, 45-9-101.
Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;
(ii) opium extracts;
(iii) opium fluid extracts;
(iv) powdered opium;
(v) granulated opium;
(vi) tincture of opium;
(vii) codeine;
(viii) ethylmorphine;
(ix) etorphine hydrochloride;
(x) hydrocodone;
(xi) hydromorphone;
(xii) metopon;
(xiii) morphine;
(xiv) oxycodone;
(xv) oxymorphone; and
(xvi) thebaine;

(b) any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a) of this section, except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alphaprodine;
(b) anileridine;
(c) bezitramide;
(d) dihydrocodeine;
(e) diphenoxylate;
(f) fentanyl;
(g) isomethadone;

(h) levomethorphan;
(i) levorphanol;
(j) metazocine;
(k) methadone;
(l) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(m) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(n) pethidine (meperidine);
(o) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(p) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(q) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(r) phenazocine;
(s) piminodine;
(t) racemethorphan;
(u) racemorphan; and
(v) bulk dextropropoxyphene (nondosage forms).

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system:
(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(b) phenmetrazine and its salts;
(c) methamphetamine, its salts, isomers, and salts of its isomers; and
(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(a) amobarbital;
(b) methaqualone;
(c) pentobarbital;
(d) phencyclidine; and
(e) secobarbital.

(5) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:
(a) immediate precursor to amphetamine and methamphetamine:
(i) phenylacetone;
(b) immediate precursors to phencyclidine (PCP):
(i) 1-phenylcyclohexylamine; and
(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

History: **En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307; amd. Sec. 2, Ch. 141, L. 1983.**

Cross-References

Dangerous Drug Tax Act, Title 15, ch. 25.
Criminal sale of dangerous drugs, 45-9-101.
Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;
(b) chlorphentermine;
(c) clortermine; and
(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

(a) any substance that contains any quantity of a derivative of barbituric acid or any salt thereof;
(b) chlorhexadol;
(c) glutethimide;
(d) lysergic acid;
(e) lysergic acid amide;
(f) methyprylon;
(g) sulfondiethylmethane;
(h) sulfonethylmethane;
(i) sulfonmethane;
(j) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and
(k) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4); amd. Sec. 3, Ch. 141, L. 1983.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: **En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.**

50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino 1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;
(b) barbital;
(c) chloral betaine;
(d) chloral hydrate;
(e) chlordiazepoxide;
(f) clonazepam;
(g) clorazepate;
(h) diazepam;
(i) ethchlorvynol;
(j) ethinamate;
(k) flurazepam;
(l) halazepam;
(m) lorazepam;
(n) mebutamate;
(o) methohexital;
(p) meprobamate;
(q) methylphenobarbital (mephobarbital);
(r) oxazepam;
(s) paraldehyde;
(t) petrichloral;
(u) phenobarbital;
(v) prazepam; and
(w) temazepam.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) fenfluramine.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity

of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) diethylpropion;
(b) mazindol;
(c) pemoline, including organometallic complexes and chelates thereof;
(d) phentermine;
(e) pipradrol; and
(f) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine.

History: **En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979; amd. Sec. 4, Ch. 141, L. 1983.**

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: **En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: **En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.**

50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Loperamide.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979; amd. Sec. 5, Ch. 141, L. 1983.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

Part 3

Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: **En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).**

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: **En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).**

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: **En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).**

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: **En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.**

Cross-References

Prescription requirements, 50-32-208.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: **En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review, Title 2, ch. 4, part 7.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;
(b) methylamine;
(c) d-lysergic acid;
(d) ergotamine tartrate;
(e) diethyl malonate;
(f) malonic acid;
(g) ethyl malonate;
(h) barbituric acid; and
(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Duty to report prescriptions issued to drug addicts, 37-2-111.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: En. Sec. 4, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report sale or transfer of a precursor to a controlled substance if he purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the sale or transfer of a precursor to a controlled substance shall be fined not more than $10,000 or imprisoned in the state prison for not more than 10 years, or both.

History: En. Sec. 5, Ch. 227, L. 1979.

CHAPTER 33

BLOOD AND BLOOD PRODUCTS

Part 1 — General Provisions

50-33-101. Labeling of containers by blood banks required.
50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale.

50-33-103. Immunity of physicians and hospitals.
50-33-104. Immunity of blood banks and tissue banks.

Part 1

General Provisions

50-33-101. Labeling of containers by blood banks required. Each container or package containing any whole blood, plasma, blood products, or blood derivatives sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein was tested as required in 50-33-104, giving the date of the test and such information as is necessary to designate the type of test made.

History: **En. Sec. 3, Ch. 284, L. 1971; R.C.M. 1947, 69-2205.**

50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale. The furnishing of and the injecting, transfusing, transplanting, or transferring into the human body of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones for any purpose.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part); amd. Sec. 1, Ch. 401, L. 1987.**

Cross-References

"Sale" as defined in Uniform Commercial Code, 30-2-106.

50-33-103. Immunity of physicians and hospitals. No physician, long-term care facility, or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility, or doctor, for injuries resulting from the furnishing or performing of such services.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).**

Cross-References

Liability, Title 27, ch. 1, part 7.

Good Samaritan law, 27-1-714.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

50-33-104. Immunity of blood banks and tissue banks. No blood bank or tissue bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting, transfusing, transplanting, or transferring of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones supplied by any such blood bank or tissue bank to any hospital or physician if such blood products or tissue products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks or the American association of tissue banks and by such test are not found to be dangerous to the health of the recipient of such blood products or tissue products.

History: En. Sec. 2, Ch. 284, L. 1971; R.C.M. 1947, 69-2204; amd. Sec. 2, Ch. 401, L. 1987.

CHAPTER 34

FLOUR AND BREAD

Part 1 — General Provisions

50-34-101. Definitions.
50-34-102. Department to adopt rules.
50-34-103. Rules to be published.
50-34-104. Inspections and taking of samples authorized.
50-34-105. Vitamin and mineral content requirements for flour.
50-34-106. Exceptions to vitamin and mineral requirements for flour.
50-34-107. Vitamin and mineral content requirements for bread.
50-34-108. Vitamin and mineral requirements to be uniform with federal standards.
50-34-109. Modification of vitamin and mineral requirements when ingredients scarce.
50-34-110. Penalty.

Part 1

General Provisions

Part Cross-References

Regulation by city authorities, 7-21-4202.

50-34-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974; R.C.M. 1947, 27-801.

50-34-102. Department to adopt rules. The department shall adopt rules and orders for the efficient enforcement of this chapter.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-34-103. Rules to be published. (1) Orders and rules adopted by the department under this chapter shall be published in the manner prescribed in subsection (2) of this section and, within the limits specified by this chapter, shall become effective on the date the department fixes.

(2) When under this chapter publication of any notice, order, or rule is required, the publication shall be made at least once in at least one daily newspaper of general circulation printed and published in this state.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(4), (5).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-34-104. Inspections and taking of samples authorized. For the purpose of this chapter, the department may take samples for analysis, conduct examinations and investigations, and enter at reasonable times a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein and all pertinent equipment, materials, containers, and labeling.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(6).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-34-105. Vitamin and mineral content requirements for flour. (1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour:

(a) not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine;

(b) not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin;

(c) not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacinamide;

(d) not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe).

(2) Self-rising flour, in addition to the above ingredients, shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca).

History: En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-106. Exceptions to vitamin and mineral requirements for flour. (1) The terms of 50-34-105 shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe certifying that such flour will be:

(a) resold to a distributor, baker, or other processor;

(b) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this chapter; or

(c) used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-107. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls:

(1) not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine;

(2) not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin;

(3) not less than 10.0 milligrams and not more than 15.0 milligrams of niacin;

(4) not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe).

History: En. Sec. 3, Ch. 274, L. 1971; R.C.M. 1947, 27-803(part).

50-34-108. Vitamin and mineral requirements to be uniform with federal standards. (1) The requirements for vitamin and mineral content specified in 50-34-105 and 50-34-107 are identical with those of the federal standards.

(2) When the vitamin and mineral requirements in 50-34-105 and 50-34-107 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this chapter, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended (Title 21 U.S.C. 301 et seq.).

History: (1)En. Sec. 3, Ch. 274, L. 1971; Sec. 27-803, R.C.M. 1947; (2)En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; Sec. 27-804, R.C.M. 1947; R.C.M. 1947, 27-803(part), 27-804(2).

50-34-109. Modification of vitamin and mineral requirements when ingredients scarce. (1) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by 50-34-105 or 50-34-107 and that because of this shortage the sale and distribution of flour, white bread, or rolls may be impeded by the enforcement of this chapter, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls and, if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department.

(2) These findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate federal agency or officer.

(3) In the absence of an order of the appropriate federal agency or factual information supplied by it, the department, on receiving the sworn statements of 10 or more persons subject to this chapter that they believe a shortage exists or is imminent, shall within 20 days hold a public hearing at which an interested person may present evidence and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least 10 days before it.

(4) When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least 10 days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than 30 days after its publication revoking the previous order; however, undisposed stocks of flour on hand at the effective date of the revocation order or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

History: **En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(3).**

Cross-References

Emergency rules, 2-4-303.

50-34-110. Penalty. A person who violates the provisions of this chapter or the orders or rules promulgated by the department under authority of it shall upon conviction be fined for each offense no more than $100 or be imprisoned for any term not to exceed 30 days.

History: **En. Sec. 5, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 4, Ch. 187, L. 1977; R.C.M. 1947, 27-805.**

CHAPTER 35

IMPORTED MEATS
(Repealed. Sec. 1, Ch. 136, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-35-101. En. 27-320 by Sec. 3, Ch. 415, L. 1975; R.C.M. 1947, 27-320.

50-35-102. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part).

50-35-103. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part); amd. Sec. 1, Ch. 278, L. 1979.

50-35-104. En. 27-319 by Sec. 2, Ch. 415, L. 1975; R.C.M. 1947, 27-319; amd. Sec. 2, Ch. 278, L. 1979.

50-35-105. En. Sec. 3, Ch. 278, L. 1979.

CHAPTER 36

MATTRESSES — SHODDY CONTROL

Part 1 — General Provisions

50-36-101. Definitions.
50-36-102. Department authorized to adopt rules.
50-36-103. Inspections authorized.
50-36-104. Label required.
50-36-105. Prohibited acts.
50-36-106. Condemnation of mattresses.
50-36-107. Each mattress in violation a separate offense.

Part 1

General Provisions

50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2)En. Sec. 114, Ch. 197, L. 1967; Sec. 69-4701, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4701.

50-36-102. Department authorized to adopt rules. The department may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4704.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-36-103. Inspections authorized. Officers and employees of the department, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated, or sold and examine the premises or records to determine whether statutes or rules and standards adopted by the department are being violated.

History: En. Sec. 118, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4705.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Local Boards of Health, Title 50, ch. 2.

50-36-104. Label required. A person shall not manufacture or renovate for sale, consignment, or rental a mattress unless it bears a label not smaller than 6 square inches securely attached to the covering which states the name and address of the manufacturer or vendor and type and percent of various materials used in filling. If the mattress contains secondhand material or has been renovated or remade, the label shall contain the words "secondhand material". The labels shall be in the form and contain information as prescribed by the department.

History: **En. Sec. 115, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4702.**

50-36-105. Prohibited acts. A person shall not:

(1) manufacture or renovate for sale, consignment, or rental a mattress containing material designated as unfit for filling by rules adopted by the department;

(2) manufacture or renovate for sale, consignment, or rental a mattress which contains secondhand materials or materials designated shoddy by the department unless the mattress has been fumigated or sterilized by a process approved by the department;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by 50-36-104.

History: **En. Sec. 116, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4703.**

50-36-106. Condemnation of mattresses. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the department. Mattresses seized shall be inspected by the nearest city judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: **En. Sec. 119, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4706.**

Cross-References

Justices of the Peace, Title 3, ch. 10, part 2.

City Judges, Title 3, ch. 11, part 2.

50-36-107. Each mattress in violation a separate offense. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: **En. Sec. 120, Ch. 197, L. 1967; R.C.M. 1947, 69-4707.**

CHAPTER 37

FIREWORKS

Part 1 — General Provisions

50-37-101. Fireworks defined.
50-37-102. Where chapter not to apply.
50-37-103. Unlawful sale, transportation, or use of fireworks.
50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit.
50-37-105. Permissible fireworks.
50-37-106. Sale of fireworks restricted to certain dates.
50-37-107. Supervised public display of fireworks authorized.
50-37-108. Damage indemnity bond required for public display.

50-37-109. Confiscation.
50-37-110. Penalties.

Chapter Cross-References

Municipal power to regulate bonfires, fireworks, explosives, and inflammable materials, 7-33-4205, 7-33-4206.

Unlawful sale of fireworks, 45-5-623.

Part 1

General Provisions

50-37-101. Fireworks defined. The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(part).

50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit issued under 50-37-107 at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) Nothing in this chapter authorizes the sale of fireworks in a city or town that has banned the sale of fireworks within the city or town as authorized in 7-33-4206.

History: (1)En. Sec. 5, Ch. 143, L. 1947; amd. Sec. 3, Ch. 273, L. 1959; Sec. 69-2704, R.C.M. 1947; (2)En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; Sec. 69-2701, R.C.M. 1947; R.C.M. 1947, 69-2701(part), 69-2704; amd. Sec. 16, Ch. 37, L. 1979; amd. Sec. 4, Ch. 140, L. 1985; amd. Sec. 1, Ch. 410, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (3) providing that chapter does not authorize fireworks sale within city or town that has banned sale under 7-33-4206. Amendment effective April 3, 1989.

Cross-References

Municipal power to regulate fireworks, 7-33-4206.

50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks without a current fireworks wholesaler permit or in violation of 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 by mail order solicitation.

(5) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 within 300 feet of a hospital or church.

(6) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics, fireworks as defined in 50-37-101, or permissible fireworks as enumerated in 50-37-105:

(a) within the exterior boundaries of a state forest, state park, or state recreation area;

(b) within 100 feet of a fireworks retail sales location;

(c) from, inside, or toward a motor vehicle; or

(d) in the vicinity of another person or group of people or any animal in a manner likely to expose them to the risk of injury.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(1), (5), (6), (8); amd. Sec. 1, Ch. 598, L. 1985.

Cross-References

State parks, Title 23, ch. 1, part 1.

Unlawful sale of fireworks, 45-5-623.

50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit. (1) Subject to subsection (2) it is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler must obtain a fireworks wholesaler permit from the department of commerce.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of commerce, which must be set by the department of commerce commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that he:

(i) is at least 18 years of age;

(ii) is of good moral character; and

(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of commerce shall adopt rules implementing this section.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(3); amd. Sec. 2, Ch. 598, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department of Commerce, Title 2, ch. 15, part 18.

50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, and bottle rockets, include and are limited to those that meet the definition of "common fireworks" as set forth in the U.S. department of transportation's Hazardous Materials Regulations, 49 C.F.R., parts 173.88 and 173.100, as they read on January 1, 1985, and that comply with the construction, chemical composition, and labeling regulations of the U.S. consumer product safety commission, as set forth in 16 C.F.R., part 1507, as it read on January 1, 1985.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(4); amd. Sec. 3, Ch. 598, L. 1985.

50-37-106. Sale of fireworks restricted to certain dates. No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(7).

50-37-107. Supervised public display of fireworks authorized. (1) The state fire marshal or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire marshal or the chief of the fire department or other officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977; R.C.M. 1947, 69-2702; amd. Sec. 1, Ch. 164, L. 1981; amd. Sec. 5, Ch. 140, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State Fire Marshal, 2-15-2005.

50-37-108. Damage indemnity bond required for public display. The state fire marshal or the governing body of the city, town, or county shall require a bond considered adequate by the state fire marshal or governing body from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors.

History: En. Sec. 4, Ch. 143, L. 1947; R.C.M. 1947, 69-2703; amd. Sec. 6, Ch. 140, L. 1985.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

50-37-109. Confiscation. The state fire marshal or any sheriff, police officer, or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History: En. Sec. 6, Ch. 143, L. 1947; R.C.M. 1947, 69-2705.

Cross-References

State Fire Marshal, 2-15-2005.

50-37-110. Penalties. Any person, firm, partnership, association, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $500 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 143, L. 1947; amd. Sec. 4, Ch. 273, L. 1959; R.C.M. 1947, 69-2706.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 38

EXPLOSIVES

(Repealed. Sec. 3, Ch. 187, L. 1985)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-38-101. En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R.C.M. 1921; re-en. Sec. 2786, R.C.M. 1935; R.C.M. 1947, 69-1901.

50-38-102. En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R.C.M. 1921; re-en. Sec. 2804, R.C.M. 1935; R.C.M.1947, 69-1919.

50-38-103. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-104. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-105. En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R.C.M. 1921; re-en. Sec. 2803, R.C.M. 1935; R.C.M. 1947, 69-1918.

50-38-106. En. Sec. 714, Pen. C. 1895; re-en. Sec. 8552, Rev. C. 1907; re-en. Sec. 2813, R.C.M. 1921; re-en. Sec. 2813, R.C.M. 1935; R.C.M. 1947, 69-1928.

50-38-107. En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; re-en. Sec. 2814, R.C.M. 1935; amd. Sec. 56, Ch. 359, L. 1977; R.C.M. 1947, 69-1929; amd. Sec. 7, Ch. 198, L. 1981.

50-38-108. En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R.C.M. 1921; re-en. Sec. 2805, R.C.M. 1935; R.C.M. 1947, 69-1920.

50-38-201. En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R.C.M. 1921; re-en. Sec. 2797, R.C.M. 1935; R.C.M. 1947, 69-1912.

50-38-202. En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R.C.M. 1921; re-en. Sec. 2799, R.C.M. 1935; R.C.M. 1947, 69-1914.

50-38-203. En. Sec. 708, Pen. C. 1895; re-en. Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R.C.M. 1921; re-en. Sec. 2807, R.C.M. 1935; R.C.M. 1947, 69-1922.

50-38-204. En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; re-en. Sec. 2808, R.C.M. 1935; amd. Sec. 14, Ch. 187, L. 1977; R.C.M. 1947, 69-1923.

50-38-205. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-206. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-207. En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R.C.M. 1921; R.C.M. 1947, 69-1908.

50-38-208 through 50-38-210 reserved.

50-38-211. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-212. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-213. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-214. En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R.C.M. 1921; re-en. Sec. 2790, R.C.M. 1935; R.C.M. 1947, 69-1905.

50-38-215. En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R.C.M. 1921; re-en. Sec. 2789, R.C.M. 1935; R.C.M. 1947, 69-1904.

50-38-216 through 50-38-220 reserved.

50-38-221. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(part).

50-38-222. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(a).

50-38-223. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(b).

50-38-224 through 50-38-230 reserved.

50-38-231. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-232. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-233. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-234. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-235. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part); amd. Sec. 2, Ch. 239, L. 1983.

50-38-301. En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R.C.M. 1921; re-en. Sec. 2806, R.C.M. 1935; R.C.M. 1947, 69-1921.

50-38-302. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-303. En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R.C.M. 1921; re-en. Sec. 2811, R.C.M. 1935; R.C.M. 1947, 69-1926.

50-38-304. En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; re-en. Sec. 2810, R.C.M. 1935; amd. Sec. 15, Ch. 187, L. 1977; R.C.M. 1947, 69-1925; amd. Sec. 17, Ch. 37, L. 1979.

Chapter Cross-References

Licensing of persons using explosives in the demolition or construction of buildings, Title 37, ch. 72.

CHAPTER 39

FIRE PROTECTION EQUIPMENT

Part 1 — Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required.
50-39-102. Application for certificate, permit, and license.
50-39-103. Inspections and examinations authorized.
50-39-104. Revocations and suspensions authorized.
50-39-105. Fees.

Part 2 — Standardization

50-39-201. Fire protection equipment to be equipped with standard thread.
50-39-202. Fire marshal to direct standardization.
50-39-203. Notice of necessary changes — converting equipment.

Part 1

Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required. A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm must obtain from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in such business.

History: **En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).**

Cross-References
State Fire Marshal, 2-15-2005.

50-39-102. Application for certificate, permit, and license. (1) Applications for licenses, permits, or certificates shall be made on a form prescribed by the state fire marshal.

(2) The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal and who pays the required fee.

(4) The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

History: **En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a).**

Cross-References
State Fire Marshal, 2-15-2005.

50-39-103. Inspections and examinations authorized. The state fire marshal may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates.

History: **En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).**

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Searches and seizures, Art. II, sec. 11, Mont. Const.

50-39-104. Revocations and suspensions authorized. The state fire marshal may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the fire marshal under applicable law.

History: **En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).**

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

50-39-105. Fees. (1) The state fire marshal or his representative shall charge a fee, not to exceed a total of $25, for the inspection and issuance of licenses, permits, and certificates.

(2) All fees collected under this section shall be paid into the general fund.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d).

Cross-References
State fund structure, 17-2-102.

Part 2

Standardization

50-39-201. Fire protection equipment to be equipped with standard thread. Hereafter, all equipment for fire protection purposes purchased by state and municipal authorities or any other authorities having charge of public property shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state.

History: En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. Fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after March 1, 1929. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

Cross-References
State Fire Marshal, 2-15-2005.

50-39-203. Notice of necessary changes — converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in protecting the property or putting out fire of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.

Cross-References
State Fire Marshal, 2-15-2005.

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

50-40-101. Short title.
50-40-102. Purpose.
50-40-103. Definitions.
50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.
50-40-105. No smoking signs in certain places.
50-40-106. Requirements of health care facilities.
50-40-107. Exemptions.
50-40-108. Enforcement.
50-40-109. Penalties.

Part 2 — Government Offices and Work Areas

50-40-201. Reservation of smoking and nonsmoking areas in work areas in state and local government buildings.

Part 1

Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(6) "Smoking area" means a designated area in which smoking is permitted.

(7) "Place of work" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981.

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs;

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.

History: En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981; amd. Sec. 2, Ch. 505, L. 1985; amd. Sec. 1, Ch. 458, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) deleted "Except for those enclosed public places provided for in 50-40-105 and as provided in 50-40-201"; inserted (1)(d) relating to designation of nonsmoking area; and made minor changes in phraseology. Amendment effective April 5, 1989.

50-40-105. No smoking signs in certain places. No smoking signs shall be conspicuously posted in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: En. Sec. 5, Ch. 368, L. 1979.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

(a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

Cross-References
"Health care facility" defined, 50-5-101.

50-40-107. Exemptions. The following shall be exempt from this part:
(1) restrooms;
(2) taverns or bars where meals are not served;
(3) vehicles or rooms seating six or fewer members of the public;
(4) school district buildings and facilities designated as tobacco-free by the board of trustees of the school district;
(5) community college buildings or facilities designated as tobacco-free by the board of trustees of the community college district.

History: En. Sec. 7, Ch. 368, L. 1979; amd. Sec. 2, Ch. 466, L. 1989.

Compiler's Comments
1989 Amendment: Inserted (4) and (5) exempting designated school and community college buildings and facilities.

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979.

Cross-References
Local Boards of Health, Title 50, ch. 2.

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than $25.

History: En. Sec. 3, Ch. 460, L. 1981.

Part 2

Government Offices and Work Areas

50-40-201. Reservation of smoking and nonsmoking areas in work areas in state and local government buildings. In offices and work areas in buildings maintained by the state or a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, in which seven or more employees of the state or political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989.

Compiler's Comments
1989 Amendment: Near middle inserted exception clause for a designated school or community college facility; and made minor change in phraseology.

CHAPTER 41

LAETRILE

Part 1 — General Provisions

50-41-101. Laetrile defined.
50-41-102. Laetrile authorized.
50-41-103. Hospital may not interfere.

50-41-104. Health care facility liability.
50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed — permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1

General Provisions

50-41-101. Laetrile defined. As used in this chapter, "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

History: En. Sec. 1, Ch. 454, L. 1979.

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

History: En. Sec. 2, Ch. 454, L. 1979.

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

History: En. Sec. 3, Ch. 454, L. 1979.

Cross-References

"Health care facility" and "hospital" defined, 50-5-101.

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

History: En. Sec. 4, Ch. 454, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 5, Ch. 454, L. 1979.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-41-106. Laetrile not endorsed — permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 454, L. 1979.

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: En. Sec. 7, Ch. 454, L. 1979.

Cross-References

Regulation of the practice of medicine, Title 37, ch. 3.

Regulation of the practice of pharmacy, Title 37, ch. 7.

CHAPTER 42

DIMETHYL SULFOXIDE (DMSO)

Part 1 — General Provisions

50-42-101. DMSO defined.
50-42-102. DMSO authorized.
50-42-103. Hospital not to interfere.
50-42-104. Health care facility nonliability.
50-42-105. Physician not subject to disciplinary action.
50-42-106. DMSO not endorsed.
50-42-107. DMSO optional.

Part 1

General Provisions

Part Cross-References

Drugs and devices, Title 50, ch. 31, part 3.

50-42-101. DMSO defined. As used in this part, "DMSO" means dimethyl sulfoxide.

History: En. Sec. 2, Ch. 333, L. 1981.

50-42-102. DMSO authorized. The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

History: En. Sec. 3, Ch. 333, L. 1981.

50-42-103. Hospital not to interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

History: En. Sec. 4, Ch. 333, L. 1981.

Cross-References

"Health care facility" and "hospital" defined, 50-5-101.

50-42-104. Health care facility nonliability. No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

History: **En. Sec. 5, Ch. 333, L. 1981.**

Cross-References

Liability, Title 27, ch. 1, part 7.

50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 333, L. 1981.**

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-42-106. DMSO not endorsed. This part is not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 7, Ch. 333, L. 1981.**

50-42-107. DMSO optional. This part does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

History: **En. Sec. 8, Ch. 333, L. 1981.**

Cross-References

Regulation of the practice of medicine, Title 37, ch. 3.

Regulation of the practice of pharmacy, Title 37, ch. 7.

CHAPTER 43

CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN

Part 1 — General Provisions

50-43-101. Purpose.
50-43-102. Definitions.
50-43-103. Authorization of medication.
50-43-104. Health care facility may not interfere.
50-43-105. Health care facility immunity.
50-43-106. Physician not subject to disciplinary action.
50-43-107. Medication not endorsed — permitted as dietary supplement.
50-43-108. Medication not required.

Part 1

General Provisions

50-43-101. Purpose. The purpose of this part is to provide for the continuation of medication initiated by a physician for multiple sclerosis. This medication includes the substances described in this part and has been found to be effective in alleviating the symptoms of multiple sclerosis.

History: **En. Sec. 1, Ch. 430, L. 1987.**

50-43-102. Definitions. In this part, the following definitions apply:

(1) "Calcium-EAP" means a calcium salt of the monoester (2-ethylamine) of phosphoric acid.

(2) "Harnosal" means a compound of sulfamethizole and sulfaethidole. A 500-milligram tablet contains 350 milligrams of sulfamethizole and 150 milligrams of sulfaethidole.

(3) "Phosetamin" means a compound of potassium salt of the monoester (2-ethylamine) of phosphoric acid, magnesium salt of the monoester (2-ethylamine) of phosphoric acid, and calcium salt of the monoester (2-ethylamine) of phosphoric acid. A 350-milligram tablet contains 145.8 milligrams of the potassium salt, 145.8 milligrams of the magnesium salt, and 58.4 milligrams of the calcium salt.

History: **En. Sec. 2, Ch. 430, L. 1987.**

50-43-103. Authorization of medication. The manufacture, sale, possession, and distribution of calcium-EAP, harnosal, and phosetamin to provide for the continuation of medication initiated by a physician for multiple sclerosis are lawful within this state.

History: **En. Sec. 3, Ch. 430, L. 1987.**

50-43-104. Health care facility may not interfere. A health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of calcium-EAP, harnosal, or phosetamin when prescribed or administered by a physician.

History: **En. Sec. 4, Ch. 430, L. 1987.**

50-43-105. Health care facility immunity. No health care facility or employee thereof may be held liable for the administration of calcium-EAP, harnosal, or phosetamin to any person.

History: **En. Sec. 5, Ch. 430, L. 1987.**

50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under his care in the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 430, L. 1987.**

50-43-107. Medication not endorsed — permitted as dietary supplement. This part:

(1) is not an endorsement of calcium-EAP, harnosal, or phosetamin for the treatment of any malignancy, disease, illness, or physical condition; and

(2) does not prohibit use of calcium-EAP, harnosal, or phosetamin as a dietary supplement.

History: **En. Sec. 7, Ch. 430, L. 1987.**

50-43-108. Medication not required. This part does not require:

(1) a physician to prescribe calcium-EAP, harnosal, or phosetamin for any patient; or

(2) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute calcium-EAP, harnosal, or phosetamin.

History: **En. Sec. 8, Ch. 430, L. 1987.**

CHAPTERS 44 THROUGH 49

RESERVED

CHAPTER 50

FOOD ESTABLISHMENTS

Part 1 — General Provisions

50-50-101. Purpose of regulation.
50-50-102. Definitions.
50-50-103. Department authorized to adopt rules.
50-50-104. Cooperative agreements authorized.
50-50-105. Diseased person not to handle food.
50-50-106. Injunctions.
50-50-107. County attorney to prosecute violations.
50-50-108. Violation of chapter a misdemeanor.

Part 2 — Licensing

50-50-201. License required.
50-50-202. Establishments exempt from license requirement.
50-50-203. Application for license.
50-50-204. Right to license.
50-50-205. License fee — late fee.
50-50-206. License not transferable.
50-50-207. Expiration date of license.
50-50-208. Local board to report number of licensees to department.
50-50-209. Cancellation of license.
50-50-210. Submission of plan of correction as bar to cancellation.
50-50-211. Notice and hearing required.
50-50-212. Cancellation of license for multiple-type establishment.
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50-50-301. Health officers to investigate and make inspections.
50-50-302. Health officers to have free access.
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Part 4 — Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat.
50-50-402. Plant owner not responsible for violation of game laws.
50-50-403. Liability of frozen food plant operators restricted.

Part 1

General Provisions

50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required to prevent and eliminate conditions and practices which endanger public health.

History: En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611.

50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(4) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(5) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(6) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(7) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(8) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(9) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(11) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

History: **En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612; amd. Sec. 1, Ch. 199, L. 1987.**

50-50-103. Department authorized to adopt rules. To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

History: **En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

History: **En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).**

Cross-References

Interlocal cooperation, Art. XI, sec. 7, Mont. Const.

Interlocal agreements, Title 7, ch. 11, part 1.

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any establishment or in the handling or processing of food.

History: **En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619.**

50-50-106. Injunctions. Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this chapter.

History: **En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2.**

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-107. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: **En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5).**

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

50-50-108. Violation of chapter a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, he shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625.

Part 2

Licensing

50-50-201. License required. (1) Except as provided in 50-50-202, a person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979; amd. Sec. 2, Ch. 199, L. 1987.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Cities authorized to license soft drink establishments, 7-21-4201.

Local Boards of Health, Title 50, ch. 2.

50-50-202. Establishments exempt from license requirement. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) No license is required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation register with the local health officer or sanitarian on forms provided by the department.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6); amd. Sec. 3, Ch. 199, L. 1987.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

50-50-203. Application for license. An application for a license is made to the department on forms and contains information required by the department.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1).

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Discrimination in licensing prohibited, 49-3-204.

50-50-205. License fee — late fee. (1) For each license issued, the department shall collect a fee of $30. It shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the state general fund.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the state general fund.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 336, L. 1983; amd. Sec. 1, Ch. 247, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) requiring collection of a $25 late fee.

Cross-References

State fund structure, 17-2-102.

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. Licenses expire on December 31 following the date of issue unless canceled for cause.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4).

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-50-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type establishment includes an establishment authorized by 50-50-201(2).

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3).

50-50-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4).

50-50-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Local Boards of Health, Title 50, ch. 2.

Part 3

Inspections

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

50-50-301. Health officers to investigate and make inspections. State and local health officers, sanitarians, or other authorized persons shall make investigations and inspections of establishments and make reports to the department as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-302. Health officers to have free access. State and local health officers, sanitarians, and other authorized persons shall have free access to establishments at all reasonable hours.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-50-303. Licensee to furnish food samples. Persons licensed under part 2 shall furnish food samples for analysis as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3).

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, he shall issue a report in writing recommending that the food be withheld from sale to the public.

A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4).

50-50-305. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created by 50-2-108(2) which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part); amd. Sec. 5, Ch. 336, L. 1983.

Part 4

Frozen Food Lockers

Part Cross-References

Frozen food plant operator's lien for rent, 71-3-1505.

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References

Hunting and trapping licenses, Title 87, ch. 2.

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant which offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from him.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References

Fish and wildlife laws, Title 87.

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant which offers individual compartments to the public is limited to negligence in operation or negligence of his employees.

History: En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622.

Cross-References

Liability for negligence, 27-1-701, 27-1-702.

Liability of principal for agent's negligence, 28-10-602.

CHAPTER 51

HOTELS, MOTELS, AND ROOMINGHOUSES

Part 1 — General Provisions

50-51-101. Purpose of regulation.
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50-51-104. Cooperative agreements authorized.
50-51-105. County attorney to prosecute violations.
50-51-106. Violation of chapter a misdemeanor.
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Part 2 — Licensing

50-51-201. License required.
50-51-202. Application for license.
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50-51-204. License fee — late fee.
50-51-205. License fee to supersede other fees.
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50-51-209. Cancellation of license.
50-51-210. Submission of plan of correction as bar to cancellation.
50-51-211. Notice and hearing required.
50-51-212. Cancellation of license for multiple-type establishment.
50-51-213. Return of license for alteration or destruction.
50-51-214. Notification of and validation by local health officer.
50-51-215. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-51-301. Health officers to investigate and make inspections.
50-51-302. Health officers to have free access.
50-51-303. Department to pay local board for inspections.

Chapter Cross-References

Public swimming pools, Title 50, ch. 53.

Fire safety in public buildings, Title 50, ch. 61.

Bailments to innkeepers, Title 70, ch. 6, part 5.

Hotelkeepers' liens, Title 71, ch. 3, part 14.

Part 1

General Provisions

50-51-101. Purpose of regulation. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in

50-51-102 hereof, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301.

50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(4) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home, or roominghouse.

(5) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(6) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(7) "Transient guest" means a guest for only a brief stay, such as the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302; amd. Sec. 8, Ch. 597, L. 1983.

50-51-103. Department authorized to adopt rules. The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a).

50-51-104. Cooperative agreements authorized. The department is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this chapter or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(b).

Cross-References
Interlocal cooperation, Art. XI, sec. 7, Mont. Const.
Interlocal agreements, Title 7, ch. 11, part 1.

50-51-105. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(5).

Cross-References
Office of County Attorney, Title 7, ch. 4, part 7.

50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and by imprisonment in the county jail not to exceed 90 days.

History: En. Sec. 9, Ch. 18, L. 1967; R.C.M. 1947, 34-309; amd. Sec. 18, Ch. 37, L. 1979.

50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for him in such facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and may require appropriate care or placement of such person if it is found that professional nursing services are needed.

History: En. 34-311, 34-312 by Secs. 2, 3, Ch. 325, L. 1977; R.C.M. 1947, 34-311, 34-312; amd. Sec. 9, Ch. 597, L. 1983.

Cross-References
Medical services and boarding homes for the aged, Title 7, ch. 34.
Health care services, Title 53, ch. 6.

Part 2
Licensing

50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step licensing — inspection by other department, Title 50, ch. 8.

50-51-202. Application for license. Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 19, Ch. 37, L. 1979.

50-51-203. Right to renewal. (1) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: (1)En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; Sec. 34-303, R.C.M. 1947; (2)En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; Sec. 34-304, R.C.M. 1947; R.C.M. 1947, 34-303(part), 34-304(part).

50-51-204. License fee — late fee. (1) There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $30. The department shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the general fund.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the state general fund.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(a); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 336, L. 1983; amd. Sec. 2, Ch. 247, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) requiring collection of a $25 late fee.

Cross-References

State fund structure, 17-2-102.

50-51-205. License fee to supersede other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter.

History: En. Sec. 10, Ch. 18, L. 1967; R.C.M. 1947, 34-310.

50-51-206. License not transferable. Such license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-207. Expiration date of license. Each license shall expire on December 31 following its date of issue unless canceled for cause.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this part.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-51-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(2); amd. Sec. 3, Ch. 239, L. 1983.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-51-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple-type establishment includes two or more of the following: hotel, motel, or tourist home).

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(3).

50-51-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(4).

50-51-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

Cross-References

"Local health officer" defined, 50-2-101.

50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3

Inspections

50-51-301. Health officers to investigate and make inspections. (1) The department, through its employees and through local, county, and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this chapter.

(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(a).

Cross-References
Licensing of sanitarians, Title 37, ch. 40.
Local Boards of Health, Title 50, ch. 2.
One-step licensing — inspection by other department, Title 50, ch. 8.

50-51-302. Health officers to have free access. All persons authorized by this chapter or by regulations adopted under this chapter shall have free access at all reasonable hours to any of the establishments listed and defined in 50-51-102 for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(b).

Cross-References
Right of privacy, Art. II, sec. 10, Mont. Const.
Searches and seizures, Art. II, sec. 11, Mont. Const.

50-51-303. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund [account] created by 50-2-108(2) which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part); amd. Sec. 6, Ch. 336, L. 1983.

Cross-References
Local Boards of Health, Title 50, ch. 2.

CHAPTER 52

TOURIST CAMPGROUNDS AND TRAILER COURTS

Part 1 — General Provisions

50-52-101. Definitions.
50-52-102. Department to adopt rules.
50-52-103. Duty to obtain license and permit inspections.
50-52-104. County attorney to prosecute violations.
50-52-105. Violation of chapter a misdemeanor.
50-52-106. Injunction.

Part 2 — Licensing

50-52-201. Application for license.
50-52-202. License fee — late fee.
50-52-203. Expiration date of license.
50-52-204. Local board to report number of licensees to department.
50-52-205. Cancellation of license.
50-52-206. Submission of plan of correction as bar to cancellation.
50-52-207. Notice and hearing required.
50-52-208. Notification of and validation by local health officer.
50-52-209. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-52-301. Health officers to make inspections.
50-52-302. Department to pay local board for inspection.

Part 1

General Provisions

50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of health and environmental sciences.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences, except that the term does not include a parcel composed of platted lots, each lot of which is filed with the county clerk and recorder, contains only one trailer space, and is served by a public water supply system and public sewage system which meet the requirements of rules for such systems adopted pursuant to Title 75, chapter 6, part 1, and which is located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of such person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal

system, or food service and dining facilities. The term does not include any site used solely by the members and their families of a private organization that owns the site.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973; R.C.M. 1947, 69-5601; amd. Sec. 1, Ch. 341, L. 1983.

50-52-102. Department to adopt rules. The department shall adopt rules for constructing and operating campgrounds, trailer courts, work camps, and youth camps to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977; R.C.M. 1947, 69-5602; amd. Sec. 2, Ch. 341, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-52-103. Duty to obtain license and permit inspections. A person operating an establishment shall:

(1) possess a current license to do so from the department. However, a campground owned by the state or a political subdivision need not obtain a license but must comply with rules applicable to it adopted by the department.

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977; R.C.M. 1947, 69-5603; amd. Sec. 3, Ch. 341, L. 1983.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step licensing — inspection by other department, Title 50, ch. 8.

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(3).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 7.

50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the establishment is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977; R.C.M. 1947, 69-5607; amd. Sec. 4, Ch. 341, L. 1983; amd. Sec. 35, Ch. 557, L. 1987.

Cross-References
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

50-52-106. Injunction. The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

History: En. Sec. 5, Ch. 341, L. 1983.

Cross-References
Injunctions, Title 27, ch. 19.

Part 2
Licensing

50-52-201. Application for license. (1) Application for a license is made to the department on forms containing information required by the department.

(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 4, Ch. 200, L. 1979.

Cross-References
Licensing of sanitarians, Title 37, ch. 40.
"Local health officer" defined, 50-2-101.

50-52-202. License fee — late fee. (1) Each application shall be accompanied by a fee of $30.

(2) The department shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the state general fund.

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the state general fund.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 3, Ch. 336, L. 1983; amd. Sec. 3, Ch. 247, L. 1989.

Compiler's Comments
1989 Amendment: Inserted (3) requiring collection of a $25 late fee.

50-52-203. Expiration date of license. Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-204. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this part.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-52-205. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).**

50-52-206. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).**

50-52-207. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(2).**

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-52-208. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Cross-References

"Local health officer" defined, 50-2-101.

50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

"Local health officer" defined, 50-2-101.

Part 3

Inspections

Part Cross-References

Sanitation in subdivisions, Title 76, ch. 4, part 1.

50-52-301. Health officers to make inspections. The department or local health officer or sanitarian shall inspect establishments during reasonable hours as necessary.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973; R.C.M. 1947, 69-5605; amd. Sec. 6, Ch. 341, L. 1983.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Licensing of sanitarians, Title 37, ch. 40.

"Local health officer" defined, 50-2-101.

50-52-302. Department to pay local board for inspection. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund [account] created by 50-2-108(2) which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 7, Ch. 336, L. 1983.

CHAPTER 53

PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Part 1 — General Provisions

50-53-101. Purpose of regulation.
50-53-102. Definitions.
50-53-103. Sanitation and safety rules.
50-53-104. Powers of health officers.
50-53-105. Publication of inspection reports.

50-53-106. Duties of pool operators.
50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required.
50-53-108. Unauthorized construction or operation a public nuisance.
50-53-109. Violation of chapter a misdemeanor.

Part 1

General Provisions

Part Cross-References
Plans to bear professional seal, 18-2-122.

50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health and safety.

History: En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501; amd. Sec. 1, Ch. 646, L. 1985.

50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(3) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(4) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use.

History: Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502; amd. Sec. 2, Ch. 646, L. 1985.

50-53-103. Sanitation and safety rules. (1) The department shall adopt rules setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code and filed with the secretary of state pursuant to 50-60-204.

History: En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504; amd. Sec. 3, Ch. 646, L. 1985.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
Rules for facilities at hotels and motels, 50-51-103.

50-53-104. Powers of health officers. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places to determine if provisions of this chapter and rules of the department are being violated;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) enforce rules adopted by the department.

History: **En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Injunctions, Title 27, ch. 19.

Nuisances, Title 27, ch. 30.

50-53-105. Publication of inspection reports. The department may publish reports of inspections authorized by 50-53-104(1).

History: **En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.**

50-53-106. Duties of pool operators. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: **En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.**

50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

History: **En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509; amd. Sec. 1, Ch. 302, L. 1983; amd. Sec. 1, Ch. 31, L. 1985.**

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health and safety.

History: **En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510; amd. Sec. 4, Ch. 646, L. 1985.**

Cross-References

Public nuisance, Title 27, ch. 30, part 2.

Local Boards of Health — power to abate nuisances, 50-2-116.

50-53-109. Violation of chapter a misdemeanor. A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 or more than $500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

BUILDING CONSTRUCTION STANDARDS

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Chapter Cross-References

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Part 1

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Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation. "Factory-built building" does not include manufactured housing constructed after June 15, 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

(7) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(8) "Local legislative body" means the council or commission charged with governing the municipality.

(9) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (10) of this section.

(10) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(11) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977; R.C.M. 1947, 69-2105; amd. Sec. 1, Ch. 315, L. 1979; amd. Sec. 1, Ch. 555, L. 1981; amd. Sec. 1, Ch. 33, L. 1985; amd. Sec. 8, Ch. 140, L. 1985; amd. Sec. 4, Ch. 352, L. 1985.

50-60-102. Applicability. (1) The state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.

(2) The state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974; R.C.M. 1947, 69-2107; amd. Sec. 2, Ch. 555, L. 1981; amd. Sec. 1, Ch. 194, L. 1987; amd. Sec. 60, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "buildings referred to in subsection (1)" for "aforementioned buildings" and deleted last sentence that read: "The state may not enforce the state building code under 50-60-205 for those buildings."

Cross-References

Municipal power to regulate, restrain, or prevent dangerous factories, 7-33-4207.

50-60-103. Administration by department. The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their

effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974; R.C.M. 1947, 69-2109.

50-60-104. Inspection fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

Cross-References

Inspection of passenger tramways, Title 23, ch. 2, part 7.

50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through 4 in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state.

(2) Each municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code; orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Enforcement of building construction standards for modular homes, 50-60-404.

50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

50-60-108. Construction permit required. Any person who desires to construct a building which is subject to the provisions of parts 1 through 4 must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974; R.C.M. 1947, 69-2113.

50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969; R.C.M. 1947, 69-2118.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Injunctions — procedure, Title 27, ch. 19.

50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974; R.C.M. 1947, 69-2119.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2

State Building Code

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Department of Commerce approval of school building plans required prior to construction or alteration, 20-6-622.

Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-201. Purpose of state building code. The state building code shall be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons according to the principles applicable to accessibility to public buildings for handicapped persons adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to

be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy.

History: **En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975; R.C.M. 1947, 69-2110; amd. Sec. 1, Ch. 65, L. 1985.**

50-60-202. Department to be sole state agency to promulgate building regulations. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the state fire marshal may promulgate regulations relating to use of buildings and installation of equipment. The state fire marshal shall review building plans and regulations for conformity with rules promulgated by the department.

History: **En. 69-2125 by Sec. 13, Ch. 504, L. 1977; R.C.M. 1947, 69-2125.**

Cross-References

State Fire Marshal, Title 50, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-203. Department to adopt state building code by rule. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

History: **En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-204. Public hearing required — effective date of certain rules. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the state fire marshal with respect to his duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: **En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 17, Ch. 546, L. 1979; amd. Sec. 173, Ch. 575, L. 1981.**

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

State Electrical Board, Title 37, ch. 68, part 2.

Board of Plumbers, Title 37, ch. 69, part 2.

State Fire Marshal, Title 50, ch. 3.

50-60-205. When state building code applies — health care facility doors. (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(2); amd. Sec. 1, Ch. 168, L. 1983.

50-60-206. Variances to state building code. (1) The department has the power, on satisfactory proof after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within 30 days after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(4) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974; R.C.M. 1947, 69-2114.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 3

Municipal and County Building Codes

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal powers relating to fire escapes and safety exits, 7-15-4124.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-301. Municipal and county building codes authorized — health care facility doors. (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(1); (3) En. Sec. 1, Ch. 168, L. 1983.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Applicability of state building code, 50-60-205.

50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(2) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (1).

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(3), (4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-303. Municipal appeal procedure. (1) If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department.

(2) If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the department.

History: En. Sec. 13, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2116.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Part 4

Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for factory-built buildings and recreational vehicles. The department may adopt by reference nationally recognized construction standards, in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such standards, for the construction of factory-built buildings and recreational vehicles as defined in 50-60-101.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974; R.C.M. 1947, 69-2122; amd. Sec. 2, Ch. 33, L. 1985.

Cross-References

Adoption of rule by reference, 2-4-307.

50-60-402. Factory-built buildings and recreational vehicles to comply with standards. (1) No person, firm, or corporation may manufacture, sell, or offer for sale any new factory-built building or recreational vehicle unless such factory-built building or recreational vehicle, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(2) Any factory-built building or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All factory-built buildings or recreational vehicle units thus approved shall be acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975; R.C.M. 1947, 69-2123; amd. Sec. 3, Ch. 33, L. 1985.

50-60-403. Use of independent testing laboratories authorized. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

History: En. Sec. 1, Ch. 440, L. 1979.

Cross-References
General powers of local government, Art. XI, sec. 4, Mont. Const.

Part 5

Plumbing Installations

Part Cross-References
Plumber licensing, Title 37, ch. 69, part 3.

50-60-501. Declaration of public interest. It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing, and maintaining of plumbing systems be established for the protection of the people of the state.

History: En. Sec. 1, Ch. 251, L. 1959; R.C.M. 1947, 66-2412.

50-60-502. No penalties for hiring unlicensed plumbers. This part shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this part and Title 37, chapter 69.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415.

50-60-503. Exceptions. This part shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; R.C.M. 1947, 66-2426.

50-60-504. Department to prescribe minimum standards. The department of commerce shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977; R.C.M. 1947, 66-2416; amd. Sec. 5, Ch. 352, L. 1985.

Cross-References
Department of Commerce, Title 2, ch. 15, part 18.

50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of commerce.

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 6, Ch. 352, L. 1985.

50-60-506. Exceptions to permit requirement. (1) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) No permit is required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.

(4) Nothing contained in this part shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(2).

50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of commerce or its authorized representative. He shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(3); amd. Sec. 7, Ch. 352, L. 1985.

50-60-508. Permit fees. (1) The department of commerce shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached

shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 352, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of commerce or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 9, Ch. 352, L. 1985.

50-60-510. Inspection by department to insure compliance. All plumbing and drainage systems may be inspected by the department of commerce or its authorized representative to insure compliance with the requirements of the state plumbing code.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(5); amd. Sec. 10, Ch. 352, L. 1985.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of commerce, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(6); amd. Sec. 11, Ch. 352, L. 1985.

50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of commerce or its authorized representative may, after a hearing conducted under the provisions of the Montana

Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(7); amd. Sec. 12, Ch. 352, L. 1985.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-60-513. Suspension or revocation of permit. The department of commerce may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(8); amd. Sec. 13, Ch. 352, L. 1985.**

50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of commerce, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: **En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977; R.C.M. 1947, 66-2417; amd. Sec. 14, Ch. 352, L. 1985.**

Cross-References

Injunctions, Title 27, ch. 19.

50-60-515. Penalty for violations — exceptions. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when he is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.

History: **En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.**

Part 6

Electrical Installations

Part Cross-References

Licensing of electricians, Title 37, ch. 68, part 3.

Electrical easements, 70-17-101, 70-17-102.

50-60-601. Purpose. The purpose of this part is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-602. Exceptions. (1) Nothing in this part shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(4) No provisions of this part shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812(part).

50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of commerce.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part); amd. Sec. 15, Ch. 352, L. 1985.

50-60-604. Department to make inspections, issue inspection tags, and establish fees. The department of commerce shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(1); amd. Sec. 16, Ch. 352, L. 1985.

50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(2); amd. Sec. 1, Ch. 101, L. 1979; amd. Sec. 17, Ch. 352, L. 1985.

50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of commerce the inspection tag covering the installation.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(3); amd. Sec. 18, Ch. 352, L. 1985.

50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(4); amd. Sec. 19, Ch. 352, L. 1985.

Part 7

Elevators

50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up by the department in that regard is necessary.

History: En. Sec. 2, Ch. 315, L. 1979; amd. Sec. 1, Ch. 569, L. 1981.

50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to 50-60-701.

History: En. Sec. 3, Ch. 315, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-703. When inspection of elevators not necessary. Elevators that do not carry passengers do not need to be inspected by the department.

History: **En. Sec. 4, Ch. 315, L. 1979.**

CHAPTER 61

FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 — General Provisions

50-61-101. Purpose of chapter.
50-61-102. Fire marshal to administer chapter.
50-61-103. Application of chapter — definitions.
50-61-104. Fire escape requirements.
50-61-105. Specifications for adequate fire escapes.
50-61-106. Unlawful to obstruct fire escape.
50-61-107. Guide signs and exit lights required.
50-61-108. Alarm system required.
50-61-109. Safety requirements for corridors.
50-61-110. Safety requirements for exterior stairways.
50-61-111. Fire extinguisher requirements.
50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.
50-61-113. Prior approval required for construction of state-owned building designed for human occupancy.
50-61-114. Fire chief and county sheriff to make inspections.
50-61-115. Notice of violations.
50-61-116. Lessee who corrects violations entitled to reimbursement.
50-61-117. Duty of fire marshal to file complaints of violations — duty of county attorney to prosecute complaints.
50-61-118. Injunction authorized.
50-61-119. Violation of chapter a misdemeanor.
50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers.
50-61-121. Restrictions on storage of smokeless powder and small arms primers.

Part 1

General Provisions

Part Cross-References

Adoption of fire codes by municipalities, 7-5-108, 7-5-4202.

Fire protection in unincorporated towns, Title 7, ch. 33, parts 21 through 23; Title 19, ch. 12, parts 1 through 4.

Municipal power to establish and maintain a fire department and alarm system, 7-33-4201, 7-33-4202.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Fire safety certification requirement for day-care centers, 52-2-734.

50-61-101. Purpose of chapter. The purpose and intent of this chapter is to provide for the public safety in case of fire in those occupancies specified in 50-61-103; to provide for fire escapes, fire-fighting apparatus, fire alarms; and to provide for inspection of such buildings and premises by specified officers.

History: **En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801.**

50-61-102. *(Effective April 1, 1990, unless contingency occurs)* **Fire marshal to administer chapter.** The state fire marshal has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under his general charge and supervision, shall assist him in giving effect to this chapter, and are subject to his direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

50-61-102. *(Effective on occurrence of contingency)* **Fire marshal to administer chapter.** The state fire marshal has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under his general charge and supervision, shall assist him in giving effect to this chapter, and are subject to his direction and the rules adopted for the enforcement of this chapter.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6); amd. Sec. 5, Ch. 506, L. 1989.**

Compiler's Comments

1989 Amendment: Near end, after "adopted", inserted "under 50-3-102 and 50-3-103" and after "of" inserted "50-61-120 and 50-61-121 and". See contingent effective date compiler's comment.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990."

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;
(b) assembly halls;
(c) auditoriums;
(d) bowling alleys;
(e) broadcasting studios;
(f) chapels;
(g) churches;
(h) club rooms;
(i) dance halls;
(j) exhibition rooms;
(k) gymnasiums;
(l) lecture halls;
(m) lodge rooms;
(n) motion picture theaters;

(o) museums;
(p) night clubs;
(q) opera houses;
(r) passenger stations;
(s) pool rooms;
(t) recreation areas;
(u) restaurants;
(v) skating rinks;
(w) television studios;
(x) theaters; and
(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;
(b) barbershops;
(c) beauty parlors;
(d) office buildings;
(e) radio stations;
(f) telephone exchanges; and
(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:

(a) academies;
(b) colleges;
(c) libraries;
(d) schools; and
(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

(a) assembly plants;
(b) creameries;
(c) electric substations;
(d) factories;
(e) ice plants;
(f) laboratories;
(g) laundries;
(h) manufacturing plants;
(i) mills;
(j) power plants;
(k) processing plants;
(l) pumping stations;
(m) repair garages;
(n) smokehouses; and
(o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive

medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) asylums;
(b) homes for the aged;
(c) hospitals;
(d) houses of correction;
(e) day-care facilities;
(f) infirmaries;
(g) jails;
(h) nurseries;
(i) orphanages;
(j) nursing homes;
(k) penal institutions;
(l) reformatories;
(m) sanitariums;
(n) long-term care facilities; and
(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;
(b) clubhouses;
(c) convents;
(d) dormitories;
(e) dwellings;
(f) hotels;
(g) motels;
(h) multifamily houses; and
(i) lodging houses.

History: **En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802.**

50-61-104. Fire escape requirements. (1) All buildings described in 50-61-103, except private residences, of two or more stories in height shall be equipped with not less than one adequate fire escape for each 5,000 square feet of lot area or fraction thereof occupied by the building.

(2) "First story" is defined as being the story the ceiling of which is first above the level of the grade, said ceiling being an average of 5 feet or more above the ground surrounding the building.

History: **En. Sec. 3, Ch. 279, L. 1947; amd. Sec. 1, Ch. 159, L. 1949; R.C.M. 1947, 69-1803.**

Cross-References

Municipal powers relating to fire escapes and safety exits, 7-15-4124.

50-61-105. Specifications for adequate fire escapes. (1) Adequate fire escapes provided for in the preceding section shall be of interior or exterior type.

(2) It is hereby made the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction and erection of each

type of fire escape authorized by this chapter, which specifications shall be based upon a working stress of not less than 16,000 pounds to the square inch for steel, 12,000 pounds to the square inch for wrought iron, and 700 pounds to the square inch for concrete.

(3) Exterior fire escapes shall be constructed of concrete stairway, an iron or steel stairway, an iron or steel straight chute, or they may be constructed of other fire-resistive material of equal strength, to which there shall be free, unoccupied, and unobstructed passage and free, unoccupied, and unobstructed egress and ingress to and from the interior of the building. Where outside stairways do not reach the ground, same must have an iron stairway from the lowest balcony to the ground, counterbalanced so that same shall remain in a horizontal position when not in use. This stairway must be constructed in the same manner and of the same material as those of the upper balconies. When a suspended weight is used as a counterbalance, proper guides or places must be provided.

(4) Specifications for interior fire escapes shall require that they be enclosed with noncombustible material and that all stairways, halls, air chutes, laundry chutes, and all door and window openings in such interior fire escapes be properly protected with automatic or self-closing fire doors or shutters and that all stairway escapes be continuous and suitably connected with the roof of the building.

(5) No fire escape shall be approved as complying with the provisions of this chapter, the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the state fire marshal.

History: En. Sec. 4, Ch. 279, L. 1947; R.C.M. 1947, 69-1804.

Cross-References

Municipal powers relating to fire escapes and safety exits, 7-15-4124.

State Fire Marshal, Title 50, ch. 3.

50-61-106. Unlawful to obstruct fire escape. It shall be unlawful to obstruct in any manner whatsoever any fire escape required by the provisions of this chapter or hallway, corridor, or entranceway leading thereto.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-107. Guide signs and exit lights required. It shall be the duty of the owner entitled to the beneficial use, rental, or control or, if the owner be a nonresident, the occupant or lessee of any building where fire escapes are required also to provide and maintain in good condition at all times therein proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-108. Alarm system required. (1) All buildings within the scope of this chapter occupied at night by more than 10 persons, if more than one story in height, shall have in each story an electrically operated gong or gongs to be operated by any one of a number of switches, one of which shall be on each floor. Said gong or gongs shall not be less than 6 inches in diameter and installed with not less than number 14 rubber covered wire.

(2) In lieu of said gong or gongs, such buildings may be equipped with a telephone alarm system operated from a central switchboard. Wherever such

telephone system is used in such buildings, an attendant shall be on duty at the central switchboard 24 hours daily, the alarm from such switchboard shall be simultaneous in all rooms of the building, and a single switch at the switchboard shall operate said telephone alarm system.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-109. Safety requirements for corridors. (1) In all buildings hereafter erected or occupied at night for sleeping purposes and which require a fire escape or fire escapes, the public corridors shall extend to all fire escapes.

(2) In all buildings erected at July 1, 1947, not more than one room shall intervene between the corridor and the fire escape. When such a room intervenes, said corridor shall have a glass panel extending from the top rail to the door knob and the glass shall be of a kind that is easily broken. Any lock on such corridor door shall be of a nightlatch type that can be operated from inside the room without a key. Close to such door in the corridor side shall be kept an adequate instrument for breaking the glass, with an explanatory label, subject to the approval of the local fire chief or the state fire marshal.

History: En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(b), (c).

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-61-110. Safety requirements for exterior stairways. Exterior stairways hereinafter installed shall be located on buildings as remote from interior stairways as possible.

History: En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(a).

50-61-111. Fire extinguisher requirements. No fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride (CCl4); Chlorobromomethane (CH2BrCl); Azeotropic chlormethane (CM-7); Dibromodifluoromethane (CBr2F2); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane (CBrF2CBrClF); 1, 2-Dibromo-2, 2-difluoroethane (CH2BrCBrF2); Methyl bromide (CH3Br); Ethylene dibromide (CH2BrCH2Br); 1, 2-Dibromotetrafluoroethane (CBrF2CBrF2); Hydrogen bromide (HBr); Methylene bromide (CH2Br2); Bromodifluoromethane (CHBrF2); and Dichlorodifluoromethane (CCl2F2) or any other toxic or poisonous vaporizing liquid shall be kept or maintained in or upon any building without written approval by the state fire marshal or his deputy.

History: En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975; R.C.M. 1947, 69-1807.

50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or

alteration by the county commissioners. A fee of $10 shall be paid to the county treasurer for each permit. A copy of the permit shall be furnished to the county assessor. No permit may be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2).

Cross-References
County Commissioners, Title 7, ch. 4, part 21.
County Treasurer, Title 7, ch. 6, part 21.
County Assessor, 15-8-102.
State Fire Marshal, Title 50, ch. 3.

50-61-113. Prior approval required for construction of state-owned building designed for human occupancy. A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to the state fire marshal and approved by him.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(3).

Cross-References
Budget for fire protection of state-owned buildings, 2-17-112.
State Fire Marshal, Title 50, ch. 3.

50-61-114. Fire chief and county sheriff to make inspections. The chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists shall, for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:

(1) enter into school buildings at least once each 12 months; and

(2) enter into all other buildings and upon all other premises within their jurisdiction at least once each 18 months.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4); amd. Sec. 1, Ch. 323, L. 1985.

Cross-References
Structures creating fire hazard, 50-62-102.

50-61-115. Notice of violations. (1) When a building is found which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making the inspection or the state fire marshal shall serve a written notice upon the party whose duty it is to erect the fire escapes or maintain such fire apparatus.

(2) The notice shall specify the time within which the fire escapes shall be erected or the defective conditions remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last known address of the person to be notified. Whenever buildings are managed

and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).

Cross-References

Service of process upon corporation, 35-1-307.

Service of process upon nonprofit corporation, 35-2-304.

Structures creating fire hazard, 50-62-102.

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or convenant thereof or grounds for any action or damage ouster.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).

Cross-References

Structures creating fire hazard, 50-62-102.

Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

50-61-117. Duty of fire marshal to file complaints of violations — duty of county attorney to prosecute complaints. It shall be the duty of the state fire marshal or any person authorized to act in his stead to file complaint for violations of the provisions of this chapter in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).

50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this chapter, the attorney general of the state or any county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where such building is located.

History: En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).

50-61-120. *(Effective April 1, 1990, unless contingency occurs)* **Exceeding fire code limits for storage of smokeless powder and small arms primers.** (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in 50-61-121.

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

History: En. Sec. 1, Ch. 506, L. 1989.

Compiler's Comments

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990."

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties of State Fire Marshal, 50-3-102.

50-61-121. *(Effective April 1, 1990, unless contingency occurs)* **Restrictions on storage of smokeless powder and small arms primers.** (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire marshal or a fire marshal of the local jurisdiction, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with ⅝-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation.

History: **En. Sec. 2, Ch. 506, L. 1989.**

Compiler's Comments

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990."

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties of State Fire Marshal, 50-3-102.

CHAPTER 62

FIRE HAZARDS

Part 1 — Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized.
50-62-102. Structures creating fire hazard a public nuisance.
50-62-103. Service of order to repair or demolish structure.
50-62-104. Answer of owner or occupant.
50-62-105. Default judgment.
50-62-106. Hearing and judgment.
50-62-107. Proceedings on failure to comply with order.
50-62-108. Conditions or materials creating fire hazard — order to remedy.
50-62-109. Failure to comply with order.
50-62-110. Appeal to state fire marshal.
50-62-111. Penalty for failure to comply with order to correct.

Part 1

Removal of Hazards

Part Cross-References

Municipal power to inspect and regulate certain fire hazards, explosives, and other inflammable material, 7-33-4204, 7-33-4205.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Criminal offense to maintain a public nuisance, 45-8-111.

State Fire Marshal, Title 50, ch. 3, part 1.

Fire hazards in oil and gas operations, 82-11-302.

50-62-101. Entering of buildings for purpose of examination authorized. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is established, or the county sheriff where no fire department exists at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R.C.M. 1921; re-en. Sec. 2752, R.C.M. 1935; amd. Sec. 8, Ch. 229, L. 1967; R.C.M. 1947, 82-1218.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-62-102. Structures creating fire hazard a public nuisance. Any building or other structure which for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus; or for any other cause or reason is especially liable to fire and which is so situated as to endanger other buildings and property in the vicinity is hereby declared to be a public nuisance.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part).

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Nuisances, Title 27, ch. 30.

50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he shall order the structure to be repaired, torn down, or demolished and all materials removed and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of the notice upon the

owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 21, Ch. 37, L. 1979; amd. Sec. 16, Ch. 526, L. 1983.

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-62-104. Answer of owner or occupant. (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the said state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-62-105. Default judgment. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

50-62-106. Hearing and judgment. (1) The court, upon application of the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101, shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If, upon such trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929; re-en. Sec. 2753.2, R.C.M. 1935; R.C.M. 1947, 82-1221.

50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the state fire marshal or any other officer authorized in 50-62-101 may proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the state fire marshal or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. This person shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit.

History: **En. Sec. 2753-C, Ch. 139, L. 1929; re-en. Sec. 2753.3, R.C.M. 1935; amd. Sec. 1, Ch. 418, L. 1975; R.C.M. 1947, 82-1222; amd. Sec. 1, Ch. 278, L. 1981.**

Cross-References
Mortgages, Title 71, ch. 1.
Liens, Title 71, ch. 3.

50-62-108. *(Effective April 1, 1990, unless contingency occurs)* **Conditions or materials creating fire hazard — order to remedy.** If the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101 finds in any building or premises subject to their inspection any combustible materials, inflammable conditions, improperly stored smokeless powder or small arms primers, or fire hazards dangerous to the safety of the building premises or to the public, such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises.

50-62-108. *(Effective on occurrence of contingency)* **Conditions or materials creating fire hazard — order to remedy.** If the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101 finds in any building or premises subject to their inspection any combustible materials, inflammable conditions, or fire hazards dangerous to the safety of the building premises or to the public, such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part); amd. Sec. 6, Ch. 506, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence, after "conditions", inserted "improperly stored smokeless powder or small arms primers". See contingent effective date compiler's comment.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990."

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-62-109. Failure to comply with order. Any such owner, lessee, agent, or occupant upon whom such notice shall be served who shall fail to comply therewith within 24 hours thereafter, unless the order prescribes a longer time within which it may be complied with, shall be guilty of a misdemeanor, and said material may be removed or dangerous condition corrected at the expense of the owner of such building or premises or at the expense of the person upon whom such service is so made, or both, and the said state fire marshal, deputy state fire marshal, or other officer mentioned in 50-62-101 may maintain all necessary actions for the recovery thereof.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).

Cross-References

Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

50-62-110. Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the state fire marshal within 24 hours and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R.C.M. 1921; re-en. Sec. 2754, R.C.M. 1935; R.C.M. 1947, 82-1224.

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-62-111. Penalty for failure to comply with order to correct. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be fined not less than $10 or more than $50 for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R.C.M. 1921; re-en. Sec. 2755, R.C.M. 1935; R.C.M. 1947, 82-1225.

CHAPTER 63

INVESTIGATION OF FIRES

Part 1 — General Provisions

50-63-101. Examination of premises where fire occurred authorized.
50-63-102. Penalty for setting or leaving fire causing damage.
50-63-103. Liability of offender for damages and costs.

Part 2 — Initial Investigation

50-63-201. Cause of fire to be investigated.
50-63-202. Fire chief or sheriff to conduct investigation.
50-63-203. Reports to be filed with fire marshal.
50-63-204. Penalty for failure to investigate or file report.

Part 3 — Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal.
50-63-302. Private investigation authorized.
50-63-303. Fire marshal authorized to compel testimony and production of evidence.
50-63-304. Procedure to compel testimony or production of evidence.
50-63-305. Fire marshal authorized to administer oaths.
50-63-306. Refusal to testify a misdemeanor.
50-63-307. Punishment for contempt — attendance of witnesses by attachment.
50-63-308. Arrest and prosecution of arsonist.

Part 4 — Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.
50-63-402. Insurer to report suspicious fires.
50-63-403. Agencies to keep information confidential.
50-63-404. Testimony of agency personnel in action to recover under insurance policy.
50-63-405. Exemption of insurer from liability.

Chapter Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Part 1

General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, the state fire marshal and each of his subordinates at all times of day or night may enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217.

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.

Cross-References

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

Part 2

Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1).

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

State Fire Marshal, Title 50, ch. 3.

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).

50-63-203. Reports to be filed with fire marshal. (1) If it appears that the fire was of suspicious origin or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within 24 hours and shall file a written report of the cause with the state fire marshal within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(3) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms and shall contain information prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than $25 or more than $200.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.

Part 3

Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal. (1) If in his opinion further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made and cause such testimony to be reduced to writing.

(2) If the state fire marshal or a deputy fire marshal is notified by an officer or other person or knows of a violation of the laws of this state relating to fires, he shall immediately and diligently inquire into the facts of the violation.

History: (1)En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R.C.M. 1921; re-en. Sec. 2746, R.C.M. 1935; Sec. 82-1212, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1212, 82-1215(part).

Cross-References

State Fire Marshal, Title 50, ch. 3.

50-63-302. Private investigation authorized. Investigation by or under the direction of the state fire marshal may, in his discretion, be private.

He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R.C.M. 1921; re-en. Sec. 2750, R.C.M. 1935; R.C.M. 1947, 82-1216.

50-63-303. Fire marshal authorized to compel testimony and production of evidence. (1) The state fire marshal or deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation and require the production of any book, paper, or document he deems pertinent.

(2) The state fire marshal or a deputy fire marshal is authorized to have a subpoena issued for a person he has reason to believe has information or knowledge concerning a violation of the laws relating to fires. The subpoena shall command the person to appear before a justice of the peace at the time and place designated in the subpoena to testify concerning a violation of the laws relating to fires.

History: (1)En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R.C.M. 1921; re-en. 2748, R.C.M. 1935; Sec. 82-1214, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1214, 82-1215(part).

Cross-References

Justices' Courts, Title 3, ch. 10.

Subpoenas and witnesses, Title 26, ch. 2.

50-63-304. Procedure to compel testimony or production of evidence. (1) For the purpose of having a subpoena issued, the state fire marshal or deputy fire marshal may file with a justice of the peace a written statement signed by the state fire marshal or deputy fire marshal, alleging a violation of the laws of this state relating to fires, and naming the witness to be subpoenaed. The justice of the peace shall issue a subpoena for the witness named commanding him to appear before the justice of the peace at the time designated in the subpoena to testify concerning a violation of the laws relating to fires.

(2) The subpoena may be served by the sheriff or any peace officer of the county or by any other person who is a citizen of the county and shall be served and returned to the state fire marshal, deputy fire marshal, or justice of the peace in the same manner that subpoenas are served and returned when issued by justices of the peace.

(3) The witness shall be sworn to make true answers to all questions touching the matters under investigation propounded to him, and his testimony shall be reduced to writing and be signed by him.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

False swearing, 45-7-202.

50-63-305. Fire marshal authorized to administer oaths. For the purpose of this chapter, the state fire marshal or a deputy fire marshal is authorized to administer an oath to a person appearing as a witness in a proceeding investigating a violation of the laws relating to fires.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part); amd. Sec. 9, Ch. 140, L. 1985.

Cross-References

Affirmation in lieu of oath, Art. III, sec. 3, Mont. Const., 1-6-104.

Oath defined, 1-1-201.

Perjury, false swearing, and unsworn falsification to authorities, 45-7-201 through 45-7-203.

50-63-306. Refusal to testify a misdemeanor. Disobedience to a subpoena, refusal to be sworn as a witness or to sign the testimony given by a witness, or refusal to answer a proper question propounded to a witness is a misdemeanor, and a person convicted thereof shall be fined no more than $100 or be imprisoned in the county jail for any term not to exceed 90 days, or both.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-307. Punishment for contempt — attendance of witnesses by attachment. (1) A justice of the peace, when acting under the provisions of this chapter, may adjourn proceedings from time to time and punish a witness for contempt because of his refusal to be sworn, to answer questions as a witness, or to sign his testimony.

(2) The justice of the peace may compel the attendance of witnesses by attachment.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

Cross-References

Contempts, Title 3, ch. 1, part 5.

50-63-308. Arrest and prosecution of arsonist. (1) If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses and a copy of material testimony taken in the case.

(2) If the testimony so taken discloses the fact that an offense has been committed, the county attorney of the county in which the offense was committed shall prosecute the person committing the offense in the same manner as in other criminal cases.

History: (1)En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R.C.M. 1921; re-en. Sec. 2747, R.C.M. 1935; Sec. 82-1213, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1213, 82-1215(part).

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Part 4

Information from Insurers

Part Cross-References

Insurance and Insurance Companies, Title 33.

Property insurance, Title 33, ch. 24.

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

History: **En. Sec. 1, Ch. 145, L. 1979.**

50-63-402. Insurer to report suspicious fires. Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

History: **En. Sec. 2, Ch. 145, L. 1979.**

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

History: **En. Sec. 3, Ch. 145, L. 1979.**

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

History: **En. Sec. 4, Ch. 145, L. 1979.**

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

50-63-405. Exemption of insurer from liability. In the absence of fraud or bad faith, the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by 50-63-401; or

(2) notifying an appropriate agency of a fire loss as required by 50-63-402.

History: **En. Sec. 5, Ch. 145, L. 1979.**

Cross-References

Liability, Title 27, ch. 1, part 7.

False reports to law enforcement authorities, 45-7-205.

CHAPTER 64

ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION

Part 1 — General Provisions

50-64-101. Purpose.
50-64-102. Definitions.
50-64-103. Rulemaking authorized.
50-64-104. Safeguards to follow during demolition.
50-64-105. Use of asbestos-containing spray products prohibited.
50-64-106. Use of fibrated product or compound — supervisory personnel required.
50-64-107. Violations — penalties.

Chapter Cross-References

Occupational Disease Act of Montana, Title 39, ch. 72.

Part 1

General Provisions

50-64-101. Purpose. The purpose of this chapter is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: En. 69-7401 by Sec. 1, Ch. 570, L. 1977; R.C.M. 1947, 69-7401.

50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: En. 69-7402 by Sec. 2, Ch. 570, L. 1977; R.C.M. 1947, 69-7402; amd. Sec. 20, Ch. 352, L. 1985.

50-64-103. Rulemaking authorized. The department is granted authority to promulgate rules necessary to accomplish the purposes of this chapter.

History: En. 69-7406 by Sec. 6, Ch. 570, L. 1977; R.C.M. 1947, 69-7406.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

50-64-104. Safeguards to follow during demolition. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(1) Whenever possible, the local fire department shall be notified of the demolition.

(2) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(3) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(4) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(5) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(6) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets, with the chutes or buckets sufficiently wetted to prevent dust.

(7) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(8) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: En. 69-7403 by Sec. 3, Ch. 570, L. 1977; R.C.M. 1947, 69-7403.

50-64-105. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: En. 69-7404 by Sec. 4, Ch. 570, L. 1977; R.C.M. 1947, 69-7404.

50-64-106. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: En. 69-7405 by Sec. 5, Ch. 570, L. 1977; R.C.M. 1947, 69-7405.

50-64-107. Violations — penalties. (1) A person who violates any provision of this chapter commits a misdemeanor.

(2) A person convicted of violating this chapter shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this chapter is a separate offense.

History: En. 69-7407 by Sec. 7, Ch. 570, L. 1977; R.C.M. 1947, 69-7407.

CHAPTERS 65 THROUGH 69

RESERVED

CHAPTER 70

OCCUPATIONAL HEALTH

Part 1 — General Provisions

50-70-101. Short title.
50-70-102. Declaration of policy and purpose.
50-70-103. Definitions.
50-70-104. Administration.
50-70-105. Duties of department.
50-70-106. Duties of board.
50-70-107. Duty of physicians and others to report occupational disease.
50-70-108. Application for federal aid.
50-70-109. Confidentiality of records.
50-70-110. Hearing officer.
50-70-111. Hearings.
50-70-112. Permits.
50-70-113. Emissions prohibited.
50-70-114. Variances.
50-70-115. Inspection.
50-70-116. Enforcement.
50-70-117. Emergency procedure.
50-70-118. Penalty.

Part 1

General Provisions

Part Cross-References
Workers' compensation, Title 39, ch. 71.
Occupational Disease Act of Montana, Title 39, ch. 72.
Silicosis benefits, Title 39, ch. 73.

50-70-101. Short title. This chapter shall be known and may be cited as the "Occupational Health Act of Montana".

History: **En. Sec. 1, Ch. 316, L. 1971; R.C.M. 1947, 69-4206.**

50-70-102. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such conditions at the work place as will protect human health and safety and, to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and for a framework within which all values may be balanced in the public interest.

History: **En. Sec. 2, Ch. 316, L. 1971; R.C.M. 1947, 69-4207.**

50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside his employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Work place" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place.

History: **En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974; R.C.M. 1947, 69-4208.**

50-70-104. Administration. Except as otherwise provided, the department is responsible for administration of this chapter.

History: **En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974; R.C.M. 1947, 69-4209.**

50-70-105. Duties of department. The department shall:

(1) enforce board orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any work place in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974; R.C.M. 1947, 69-4211.1.

50-70-106. Duties of board. The board shall:

(1) adopt, amend, and repeal rules implementing and consistent with this chapter;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at any place designated by the board;

(3) designate an attorney to assist in conducting hearings and appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost;

(4) issue orders necessary to carry out this chapter;

(5) require access to records relating to emissions;

(6) establish threshold limit values of airborne contaminants for the state as a whole.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967; R.C.M. 1947, 69-4204.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Workers' compensation, Title 39, ch. 71.

50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971; R.C.M. 1947, 69-4220.

50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations which are furnished to or obtained by the board or department and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position are only for the confidential use of the board or department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition at the work place if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974; R.C.M. 1947, 69-4219.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

50-70-110. Hearing officer. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-111. Hearings. (1) No rule, amendment, or repeal shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) (a) Any person aggrieved by any order of the board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The board acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in such form and filed in such time as the board shall prescribe.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974; R.C.M. 1947, 69-4218.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Emergency rules, 2-4-303.

50-70-112. Permits. (1) The board may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The board may require that applications for permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within 90 days after receiving application whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971; R.C.M. 1947, 69-4212.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-113. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule.

History: En. Sec. 9, Ch. 316, L. 1971; R.C.M. 1947, 69-4214.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section may be granted for a period to exceed 1 year, but an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, after a complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. Application for renewal shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder but shall be in the discretion of the board.

(6) Nothing in this section and no exemption, partial exemption, or renewal granted may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971; R.C.M. 1947, 69-4217; amd. Sec. 22, Ch. 37, L. 1979.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974; R.C.M. 1947, 69-4213.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-70-116. Enforcement. (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and answer the charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: **En. Sec. 10, Ch. 316, L. 1971; amd. Sec. 40, Ch. 349, L. 1974; R.C.M. 1947, 69-4215.**

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

50-70-117. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours thereafter, for a hearing to be held before the board. Not more than 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; amd. Sec. 41, Ch. 349, L. 1974; R.C.M. 1947, 69-4216.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

50-70-118. Penalty. (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected, except those collected by a justice's court, shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974; R.C.M. 1947, 69-4221; amd. Sec. 36, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

CHAPTER 71

OCCUPATIONAL SAFETY

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Part 1

General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-71-101. Short title. This chapter may be cited as the "Montana Safety Act".

History: En. Sec. 1, Ch. 341, L. 1969; R.C.M. 1947, 41-1708.

50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter.

(3) "Department" means the department of labor and industry.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975; R.C.M. 1946, 41-1709; amd. Sec. 48, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In definition of code changed "division" to "department"; inserted definition of Department; and deleted definition of Division. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

50-71-103. Public contractors subject to chapter. Every contractor performing services for the state or any political subdivision thereof shall be required to comply with the safety rules, codes, and provisions of this chapter as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969; R.C.M. 1947, 41-1731.

50-71-104. Effect on existing structures and equipment. Nothing contained in this chapter shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to July 1, 1969, provided that replacements and alterations shall conform to all provisions of this chapter.

History: En. Sec. 25, Ch. 341, L. 1969; R.C.M. 1947, 41-1732.

50-71-105. Qualifications of safety bureau chief. The safety bureau chief shall be a person with at least 2 years' experience or training in the field of industrial safety.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).

50-71-106. Administrative powers and duties of department. In the administration of this chapter, the department:

(1) is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment;

(2) shall carry out the provisions of this chapter;

(3) may adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this chapter into effect and in reference to the investigation of all violations of this chapter and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this chapter into effect;

(4) may on its own motion or at the request of others subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state, and the department shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-107. General research and review powers of department. The department may develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases, and related subjects through:

(1) research, conferences, lectures, and uses of public communications media;

(2) collection and dissemination of accident statistics; and

(3) development of staff competent in the review of safety codes.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(1); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-108. Power to appoint advisers. The department may appoint advisers who shall be compensated by the department if necessary and who shall assist the department in establishing standards of safety. The department may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(2); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-109. Duties of department regarding occupational health hazards. The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of health and environmental sciences and shall cooperate with the department in carrying out its duties as specified in chapter 70 of this title.

History: En. Sec. 26, Ch. 341, L. 1969; amd. Sec. 19, Ch. 182, L. 1975; R.C.M. 1947, 41-1733; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-110. Violation of safety provision a misdemeanor. In addition to all other penalties herein provided, every employer, worker, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provision of this chapter or who directly or indirectly knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969; R.C.M. 1947, 41-1730.

Cross-References

Penalty when none specified, 46-18-212.

Part 2

Duties of Employer and Employee

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-201. Employer to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein and shall furnish and use and require the use of such safety devices and safeguards and shall adopt and use such practices, means, methods, operations, and processes as are reasonably adequate to render the place of employment safe and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: **En. Sec. 3, Ch. 341, L. 1969; R.C.M. 1947, 41-1710.**

50-71-202. Employer to provide and maintain safe place of employment. (1) An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

(2) Every employer who is the owner of a place of employment or lessee thereof shall repair and maintain the same as to render it safe.

History: **En. Sec. 4, Ch. 341, L. 1969; R.C.M. 1947, 41-1711.**

50-71-203. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy, carry off, or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment or interfere in any way with the use thereof by any other person or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: **En. Sec. 5, Ch. 341, L. 1969; R.C.M. 1947, 41-1712.**

Part 3

Safety Rules and Orders

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-301. Department's power to prescribe safety devices and fix and order safety standards. The department may, after hearing had upon its own motion or upon complaint, by safety orders, rules, or otherwise:

(1) declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law;

(2) fix reasonable standards and prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment;

(3) fix and order such reasonable standards for the construction, repair, and maintenance of places of employment and equipment as shall render them safe;

(4) require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: **En. Sec. 8, Ch. 341, L. 1969; amd. Sec. 4, Ch. 182, L. 1975; R.C.M. 1947, 41-1715; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-71-302. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes as authorized in this chapter, the department shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the department may deem expedient. The notice shall contain a brief statement of the time, place, and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the department after the hearing.

History: **En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975; R.C.M. 1947, 41-1716; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-303. Procedure to compel testimony or production of evidence. (1) The department or any member thereof before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding and ask the court to compel the witness to attend and testify or produce such papers before the department.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the department or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the department or member thereof, the court thereupon shall enter an order that the witness appear before the department or member thereof at a time and place to be fixed in such order and testify and produce the required

papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; amd. Sec. 3, Ch. 182, L. 1975; R.C.M. 1947, 41-1714; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-71-304 through 50-71-310 reserved.

50-71-311. Safety codes authorized. (1) The department may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe.

(2) In the performance of its duties, the department may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees and others to suggest safety codes or amendments thereto.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-71-312. Codes to be consistent with other safety codes. (1) All such safety codes and rules shall, when adopted, be not inconsistent with the then-existing widely accepted codes of such engineering bodies as the American society of mechanical engineers, the American standards association, the American society of safety engineers, the United States of America standards institute, the national fire protection association and, in addition, agencies of the federal government with responsibilities for administering worker safety programs and other accepted codes.

(2) Any amendments made to such codes by the department shall be such that, when amended, such code shall be consistent with the widely accepted safety codes as then existing.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-313. Effective date of codes. All codes and all amendments thereto and repeals thereof shall take effect 30 days after certified copies thereof shall be filed in the office of the secretary of state.

History: **En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).**

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

50-71-314. Codes to be published. Every code adopted and every amendment or repeal thereof shall be published in such manner as the department may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the department under the provisions of this chapter, together with the dates of adoption thereof, shall be published from time to time.

History: **En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(2); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-315. Variations to code. (1) In case of practical difficulties, the department may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered.

(2) In any case where the department shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this chapter.

(3) A properly indexed record of all variations made shall be kept in the office of the department and be open to public inspection.

History: **En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-316. Assistance in compliance. Any employer may consult with the department for advice and assistance in complying with the provisions of this chapter or any codes adopted hereunder.

History: **En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-317 through 50-71-320 reserved.

50-71-321. Periodic inspections. (1) The department shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the department and a copy thereof given the employer. Such report shall not be open to public inspection or made public except on order of the department or by the department in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969; amd. Sec. 14, Ch. 182, L. 1975; R.C.M. 1947, 41-1725; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Workers' compensation, Title 39, ch. 71.

50-71-322. Procedure for worker to report safety violation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the department of the violation.

(3) Upon receiving the complaint, the department shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975; R.C.M. 1947, 41-1726; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-323. Order directing additions, repairs, and improvements. (1) Whenever the department, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe or that the practices or methods or operations or processes employed or used in connection therewith are unsafe or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the department shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment.

(2) The department may in the order direct that such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such

employment or places of employment safe in the manner and within the time specified in the order.

History: **En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975; R.C.M. 1947, 41-1717; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-324. Time allowed for compliance with order. The department shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the department for an extension of time, which the department shall grant if it finds the extension of time necessary.

History: **En. Sec. 12, Ch. 341, L. 1969; amd. Sec. 8, Ch. 182, L. 1975; R.C.M. 1947, 41-1719; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-325. Department authorized to prohibit further use of equipment constituting violation. (1) The department, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the department or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the department in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the department's state special revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the department within 20 days after entry of

such order. The department shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(1) thru (4); amd. Sec. 23, Ch. 37, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-326. Injunction authorized. In addition to all other remedies provided in this chapter, the department may bring an action to enjoin any violation of any duly adopted safety order, code, or rule.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(5); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Injunctions, Title 27, ch. 19.

50-71-327. Department authorized to order closure or cessation of work. (1) The department may order any place of employment closed or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation, or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein.

(2) Upon issuance of any such order, the department shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the department. Not more than 24 hours after the commencement of the hearing and without adjournment thereof, the department shall affirm, modify, or set aside the order.

(3) Nothing in this section shall empower the department to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that, for those employments or places of employment for which no code has been adopted and where it is found by the department that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the department may order that portion of the plant, installation, or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed 4 hours unless such period be extended by order of the department.

History: En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975; R.C.M. 1947, 41-1720; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-328 through 50-71-330 reserved.

50-71-331. Right to apply for rehearing. Any party aggrieved directly or indirectly by any final order, decision, or rule of the department made or entered pursuant to this chapter may apply to the department, within 20 days after the order of the department, for rehearing in respect to any matters determined or covered by such final order, decision, or rule and specified in the application for hearing within the time and in the manner prescribed in this chapter.

History: En. Sec. 15, Ch. 341, L. 1969; amd. Sec. 11, Ch. 182, L. 1975; R.C.M. 1947, 41-1722; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-332. Application for rehearing. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision, or rule is unjust or unlawful and every issue to be considered by the department.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within 10 days after being served.

(4) If there are no adverse parties, the application may be heard ex parte or the department may require the application for rehearing to be served on such parties as may be designated by the department.

History: En. Sec. 16, Ch. 341, L. 1969; amd. Sec. 12, Ch. 182, L. 1975; R.C.M. 1947, 41-1723; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-333. Disposition of application for rehearing. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the department, it may determine the same by confirming without hearing its previous determination or, if a rehearing is necessary to determine one or more of the issues raised, the department shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties, and such other persons as the department may order.

(3) If, after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the department shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted or should be changed, the department shall abrogate, change, or modify the same.

(4) An order or decision made after the rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the department.

(5) An application for rehearing is considered denied by the department unless it has been acted upon within 30 days from the date of filing; provided that the department may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional 30 days.

History: En. Sec. 17, Ch. 341, L. 1969; amd. Sec. 13, Ch. 182, L. 1975; R.C.M. 1947, 41-1724; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-71-334. Judicial review. (1) The orders of the department, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the department and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney, and a copy thereof shall be served by certified mail upon the department.

(4) Within 10 days after the receipt of the notice, the department shall file with the clerk of court the record of proceedings before the department, including a transcript of all the evidence adduced upon the hearing and any rehearing before the department. The district court, on application for good cause shown, may extend the time within which the department shall file the record, transcript, and evidence.

(5) The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the department.

(6) The appeal shall not be extended further than to determine whether or not:

(a) the department acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: **En. Sec. 14, Ch. 341, L. 1969; amd. Sec. 10, Ch. 182, L. 1975; R.C.M. 1947, 41-1721; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

CHAPTER 72

SAFETY IN MINES OTHER THAN COAL MINES

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Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Part 1

General Provisions

50-72-101. Applicability of chapter. This chapter shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state.

These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the department, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R.C.M. 1921; re-en. Sec. 3425, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975; R.C.M. 1947, 50-108; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-102. Definitions. (1) "Authorized representative" means mine inspector or any other person employed or authorized by the department to perform any and all duties under this chapter.

(2) "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties, including the capacity of succession.

(3) "Department" means the department of labor and industry.

(4) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as hereinafter defined, in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise.

(5) "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

(6) "Inspector" means a person employed by the department to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this chapter.

(7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

(8) "Notice" means a written notice, work order, or correction notice issued by an authorized representative of the department, which notice specifies a violation and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation.

(9) "Occupational health" means any of those health conditions that occur as a result of employment in a mine.

(10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the department or any other determination or decision made by the department.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975; R.C.M. 1947, 50-119; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Workers' compensation, Title 39, ch. 71.

50-72-103. Injunctions and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office whenever an operator:

(1) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(a); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Injunctions, Title 27, ch. 19.

50-72-104. Violations a misdemeanor. (1) Any person who knowingly:

(a) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(d) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter, shall be guilty of a misdemeanor and shall upon conviction thereof be punished for each such offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly

permits such offense to be committed shall upon conviction be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(b); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2

Inspections and Investigations

50-72-201. Inspectors. The department shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R.C.M. 1921; re-en. Sec. 3418, R.C.M. 1935; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975; R.C.M. 1947, 50-101; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Open mine shaft — criminal penalty, 45-8-113.

50-72-202. Inspections and investigations authorized. The department is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this chapter:

(1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein; and

(2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(a); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-203. Inspectors and investigators to have free access to mines. For the purpose of making any inspection or investigation authorized by this chapter, authorized representatives of the department shall have the right of entry to, upon, or through any mine which is subject to this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(b); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine which is subject to this chapter, authorized representatives of the department find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists and thereupon issue an order requiring the operator of such mine to cause all persons to be withdrawn from and to be debarred from entering such area, except the persons designated below whose presence in such area is necessary to eliminate the danger described in such order:

(1) any person whose presence in such area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(c); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been

totally abated and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, the department shall make an order requiring the operator of such mine to cause all persons in such area to be withdrawn from and to be debarred from entering such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order:

(a) any person whose presence in such area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require him to enter such area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(d); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-206. Requirements as to findings, notices, and orders. (1) Findings and orders issued pursuant to this part shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(2) Each finding made and notice or order issued under this part shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing and shall be signed by the person making them.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).**

50-72-207. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by an authorized representative pursuant to this part may be annulled, canceled, or revised by the authorized representative, and in case of a department order, the department may annul, cancel, or revise the order.

History: **En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-208. Order subject to review. The order of the duly authorized representative of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(g); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-209. Right to hearing. (1) An operator notified of an order made pursuant to 50-72-204 may apply to the department for a hearing, revision, or annulment of such order. Whenever the department after such a hearing, upon complaint or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings revising or annulling the order under review.

(2) An operator notified of an order made pursuant to 50-72-205 may apply to the department for a hearing or revision of such order. If the department finds that there was no violation, it shall make an order annulling the order under review. If the department finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the department finds that such violation was not totally abated, it shall make an order consistent with its findings.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(h), (i); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-72-210. Actions or decisions under part to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this part, all actions which the department or its authorized representatives are required to take under this part shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(j); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 73

SAFETY IN COAL MINES

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Part 1

General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining and reclamation, Title 82, ch. 3 and 4.

50-73-101. Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code".

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R.C.M. 1921; re-en. Sec. 3447, R.C.M. 1935; amd. Sec. 1, Ch. 267, L. 1974; R.C.M. 1947, 50-401.

50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974; R.C.M. 1947, 50-401.1; amd. Sec. 109, Ch. 370, L. 1987; amd. Sec. 49, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Inserted definition of Department; deleted definition of Division; and in definition of gassy mine changed "division" to "department". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

50-73-103. Department authorized to adopt rules. The department may adopt rules to carry out the provisions of this chapter and safety standards for all coal mines in this state.

History: **En. 50-412.1 by Sec. 8, Ch. 267, L. 1974; R.C.M. 1947, 50-412.1; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-73-104. Injunction and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office when an operator:

(1) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to a mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: **En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(1); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Injunctions, Title 27, ch. 19.

50-73-105. Violations a misdemeanor. (1) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to a mine;

(d) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(2); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2

Maps, Surveys, and Boundary Lines

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-201. Operator to make map of coal mine. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than 200 feet to 1 inch and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R.C.M. 1921; re-en. Sec. 3479, R.C.M. 1935; amd. Sec. 9, Ch. 267, L. 1974; R.C.M. 1947, 50-428.

50-73-202. Map of the surface. Every map or plan or, at the option of the operator, a separate map shall show the surface boundary lines contiguous to the workings and pertaining to each mine, all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R.C.M. 1921; re-en. Sec. 3482, R.C.M. 1935; amd. Sec. 12, Ch. 267, L. 1974; R.C.M. 1947, 50-431.

50-73-203. Map of underground working. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts;

the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: **En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R.C.M. 1921; re-en. Sec. 3480, R.C.M. 1935; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977; R.C.M. 1947, 50-429.**

50-73-204. Map for every seam. A separate and similar map for all active mining areas drawn to the same scale in all cases shall be made of every seam which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: **En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R.C.M. 1921; re-en. Sec. 3481, R.C.M. 1935; amd. Sec. 11, Ch. 267, L. 1974; R.C.M. 1947, 50-430.**

50-73-205. Copies of maps for department. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the department within 30 days after their completion. The maps delivered to the department shall become the property of the state. They shall be kept at the office of the department and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a department inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: **En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R.C.M. 1921; re-en. Sec. 3483, R.C.M. 1935; amd. Sec. 13, Ch. 267, L. 1974; R.C.M. 1947, 50-432; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the department or new copies furnished it within 30 days after the last survey is made.

History: **En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-207. Annual surveys in mines having only five men on shift. The department shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(2); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-208. Final survey and map update when mine abandoned or worked out. (1) When a coal mine is worked out, is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface.

(2) The department may order a survey to be made of the workings of a mine which is about to be abandoned or of which it has reason to believe the maps are inaccurate whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R.C.M. 1921; re-en. Sec. 3485, R.C.M. 1935; amd. Sec. 15, Ch. 267, L. 1974; R.C.M. 1947, 50-434; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Coal mine reclamation, Title 82, ch. 4. parts 1 and 2.

50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or for any cause not satisfactory to the department fails for a period of 3 months to furnish the department the map or plan of the mine or of the extension or a copy, the department may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-210. Restrictions as to boundary lines. In no case shall the workings of a coal mine be driven nearer than 50 feet to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the department.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974; R.C.M. 1947, 50-434.1; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Part 3

Duties of Operator and Employees in Mine Operation

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining, Title 82, ch. 3.

50-73-301. Operator to report amount of coal produced. Within 15 days after the close of each calendar month, the operator of a coal mine shall report to the department the tons of coal produced each day during the preceding month.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-302. Hoisting — licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the department.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974; R.C.M. 1947, 50-479; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Hoisting engines, Title 50, ch. 76.

50-73-303. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974; R.C.M. 1947, 50-467.1.

50-73-304. Owner to provide and maintain airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the aircourse be less than 25 square feet in mines operated in any underground system.

History: **En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R.C.M. 1921; re-en. Sec. 3511, R.C.M. 1935; amd. Sec. 18, Ch. 267, L. 1974; R.C.M. 1947, 50-468.**

50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the department.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for his use a life check not issued to him under rules adopted by the department, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the department.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: **En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977; R.C.M. 1947, 50-476; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-306. Operator to give notice of happening of certain occurrences. Immediate notice must be conveyed to the department by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope, or drift either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Coal mine reclamation, Title 82, ch. 4, parts 1 and 2.

50-73-307. Operator to make and preserve a record of all injuries. Every operator of a coal mine or his agent shall make and preserve for the information of the department, upon uniform blanks furnished by the department, a record of all injuries sustained by any employees on the premises.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-308. Operator to notify miners' organization of mine fatality. The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

Part 4

Inspections, Investigations, and Compliance

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining, Title 82, ch. 3.

50-73-401. Coal mine inspector. (1) The department shall employ an adequate number of qualified coal mine inspectors for the enforcement of this chapter and shall prescribe their duties.

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, and has been actually employed in coal mining 5 years before his appointment.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the

employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: (1)En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R.C.M. 1921; re-en. Sec. 3448, R.C.M. 1935; amd. Sec. 3, Ch. 267, L. 1974; Sec. 50-402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R.C.M. 1921; re-en. Sec. 3449, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974; Sec. 50-403, R.C.M. 1947; (3)En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R.C.M. 1921; re-en. Sec. 3451, R.C.M. 1935; amd. Sec. 6, Ch. 267, L. 1974; Sec. 50-405, R.C.M. 1947; R.C.M. 1947, 50-402, 50-403, 50-405; amd. Sec. 1, Ch. 639, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-402. Department authorized to enter and inspect coal mines. (1) The department may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto at all reasonable times either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The department may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein and for the purpose of determining whether there is compliance with a health and safety standard or order issued under this chapter.

(3) For the purpose of making an inspection or investigation authorized by this chapter, representatives of the department may enter, upon or through, any mine which is subject to this chapter.

History: (1)En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; Sec. 50-404, R.C.M. 1947; (2), (3)En. 50-480, 50-480.1 by Secs. 23, 24, Ch. 267, L. 1974; Secs. 50-480, 50-480.1, R.C.M. 1947; R.C.M. 1947, 50-404(1), 50-480, 50-480.1; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-73-403. Department to give notice of inspection to be made on complaint. If the department has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-404. Right of employees' representative and mine owner to accompany department during inspection. The employees' representative has the right to accompany the department in making an official mine inspection. The owner or operator has the right to personally accompany the department while inspecting his property or to designate someone to accompany the department.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-405. Mine owner to furnish means necessary for inspection. The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least every 3 months and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The department shall make a record of the visit, noting the time and the material circumstances of the inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-407. Department to give notice of violations and penalties therefor. The department shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state and the penalty thereby imposed for those violations.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-408. Procedure when notice of violations disregarded. (1) If the notice provided for in 50-73-407 is disregarded, the department may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found.

(2) However, where conditions justify the department in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition.

(3) Where any stops or cessation of work is enforced, the department may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-409. Department to post statement of conditions at some conspicuous location. The department shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the department inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection. It shall also post a copy at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R.C.M. 1921; re-en. Sec. 3453, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974; R.C.M. 1947, 50-407; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-410. Department inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the department shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The department may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a department coal mine inspector, the employer or his designee, and a representative of the employees.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by him may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the department finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the department shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons designated below whose presence in the area is necessary to eliminate the danger described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974; R.C.M. 1947, 50-480.2; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the department finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the department finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The department shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974; R.C.M. 1947, 50-480.3; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-414. Requirements as to findings, notices, and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the department shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing and shall be signed by the department inspector making them.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-415. Notice or order subject to amendment, cancellation, or revision. A notice or order issued by the department under this chapter may be amended, canceled, or revised by the department.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-416. Order subject to review. The order of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974; R.C.M. 1947, 50-480.5; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-73-417. Right to hearing. (1) An operator notified of an order made under 50-73-412 may apply to the department for a hearing, revision, or amendment of the order. When the department after a hearing upon complaint or upon its own motion finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising or amending the order under review.

(2) An operator notified of an order made under 50-73-413, as amended, may apply to the department for a hearing or revision of the order. If the department finds that there was no violation, it shall make an order rescinding the order under review. If the department finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the department finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: (1)En. 50-480.6 by Sec. 29, Ch. 267, L. 1974; Sec. 50-480.6, R.C.M. 1947; (2)En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977; Sec. 50-480.7, R.C.M. 1947; R.C.M. 1947, 50-480.6, 50-480.7; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this chapter, all actions which the department is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974; R.C.M. 1947, 50-480.8; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 74

BOILERS AND STEAM ENGINES

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50-74-205. Purchaser to receive certificate of inspection.
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50-74-304. Requirements for engineer's license.
50-74-305. Exceptions to requirements for engineer's license.
50-74-306. Traction licenses.
50-74-307. Requirements for traction licenses.
50-74-308. Waiver of experience requirement for traction licenses.
50-74-309. License fees.
50-74-310. Application to be accompanied by one-half of license fee.
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50-74-312. Review of license rejection.
50-74-313. Renewal of licenses.
50-74-314. Complaints and revocation of license.
50-74-315. Unlawful to operate boiler or steam engine without license.
50-74-316. Unlawful to employ unlicensed operator.
50-74-317. When unlicensed person may operate.

Part 1

General Provisions

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-101. Department to formulate rules. The department shall formulate definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(1); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-74-102. Boilers to conform to rules. No boiler which does not conform to the rules adopted by the department governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules under this chapter pertaining to new construction and installation shall have become effective unless the boiler is of special design or construction, is not covered by the rules, or is in any way inconsistent with such rules, in which case a special installation and operating permit may be granted by the department at its discretion.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919, re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(3); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-103. Boilers exempted. (1) This chapter shall not apply to boilers under federal control.

(2) The provisions of this chapter requiring inspections, inspection fees, and certificates shall not apply to steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250 degrees F when in private residences or apartments of six or less families.

(3) No persons operating any of the engines or boilers exempted from the operation of this chapter shall be required to procure a license from the department.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L.

1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-104. Dinkey engines to be classed as traction engines. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation and not for general commercial purposes shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-105. Purchaser to notify department of purchase. (1) Any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of 50-74-103 shall, within 10 days after such purchase, report the fact of such purchase to the department and shall notify the department as to where the boiler will be installed and operated.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-106. Certificate and license to be conspicuously displayed. All certificates of inspection, operating certificates, and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-107. Wrongful certification or granting of a license a misdemeanor. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-108. Tampering with safety valve a misdemeanor. A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

History: **En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(2).**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2

Inspections

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-201. State boiler inspectors. The department shall appoint state inspectors of boilers and shall prescribe their duties and term of office and fix their compensation.

History: **En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(2); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-202. Special boiler inspectors. (1) In addition to the state boiler inspectors, the department shall issue to the inspectors of boiler insurance companies authorized to do business in the state commissions, certificates, or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors.

(2) Each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors.

(3) Such special inspectors shall receive no salary or expenses from the state, nor shall the state collect inspection fees for inspections made by such special inspectors.

History: **En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(3); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-203. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating thereto.

History: **En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R.C.M. 1921; amd. Sec. 2, Ch. 225, L. 1971; R.C.M. 1947, 69-1502.**

50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety.

History: **En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).**

50-74-205. Purchaser to receive certificate of inspection. (1) Any person purchasing any boiler, whether traction or stationary, shall be entitled to receive from the seller the certificates of inspection issued on such boiler.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: **En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

50-74-206. Boiler to be inspected prior to use — duty of notification. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used.

(2) All persons who bring into this state for operation in this state any boiler or boilers must notify the department stating the number and kind of boilers and where they are to be located and operated in this state and must secure from the department a certificate of inspection before boilers are placed in operation except in the case of new boilers, which must be inspected within 90 days after they are put in use.

History: **En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-207. Boiler opened for repair subject to inspection — duty of notification. Any owner, operator, or user who opens a boiler or boilers between inspections for repair or other reasons must notify the department of such action, and such boiler or boilers shall at the discretion of the department be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-208. Penalty for operation without certificate or failure to give notice. Any person failing to give notice to the department as provided in 50-74-206 or 50-74-207 or who operates such boilers without a certificate from the department shall be punished by a fine of not less than $100 or more than $500 for each offense, by imprisonment in the county jail for not less than 30 or more than 90 days, or by both such fine and imprisonment.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-74-209. Required inspection intervals. (1) All boilers must be inspected at least once in every year except boilers exempt under provisions of 50-74-103. Upon written application, longer inspection intervals may be authorized by the department.

(2) In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R.C.M. 1921; re-en. Sec. 2717, R.C.M. 1935; Sec. 69-1506, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1506; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-210. Duty to permit inspection. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-74-211. Inspector to notify department of refused access. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day and fails to have such boiler ready for inspection at such time, the inspector shall notify the department to gain access to the boiler.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-212. Payment of costs resulting from refused access. The owner, engineer, or manager of any boiler who has refused access resulting in a department order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order in addition to the inspection fee provided by law.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-213. Failure to comply with department directed access a misdemeanor. Any person failing to immediately comply with department directed access to the boiler shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, by imprisonment in the county jail for not less than 2 months or more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Criminal responsibility of corporations, 50-72-104.

50-74-214. Engineer to assist in inspection. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-215. Interior and exterior examination of boiler. (1) The inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least 2 inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby; and that such boilers and the steam connections may be safely employed without danger to life.

(2) No boiler or steam pipe or any of the connections thereto which are made in whole or in part of bad material or are unsafe from any cause shall be approved. Nothing herein shall be construed to prevent the use of any boiler or steam generator, which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R.C.M. 1921; re-en. Sec. 2716, R.C.M. 1935; amd. Sec. 5, Ch. 225, L. 1971; Sec. 69-1505, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1505.

50-74-216. Hydrostatic pressure test. When necessary, the boiler inspector shall subject boilers, except those exempted by 50-74-103, to hydrostatic pressure, which hydrostatic pressure shall not exceed 150% of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-217. Other inspection requirements. The inspector must satisfy himself that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

History: **En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(1).**

50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 ½ shall be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

(4) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

(5) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them.

(6) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

(7) No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: **En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(3).**

50-74-219. Fee for special inspection. Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the department.

History: **En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(1); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

State reimbursement for travel, meals, and lodging, Title 2, ch. 18, part 5.

Part 3

Licenses

50-74-301. License required to operate boilers and steam engines. All boilers and steam engines, except as exempted in 50-74-103, come under the provisions of this chapter, and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-302. General requirements for licensure. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this chapter who has not met the qualifications for licensing and been found to be competent by examination to perform the duties of an engineer.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; R.C.M. 1947, 69-1508(part).

50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into four classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(1), (2).

50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must have at least 3 months' full-time experience in the operation of a boiler in this classification, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(2) An applicant for a third-class engineer's license must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(3) An applicant for a second-class engineer's license must:

(a) have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(b) hold a valid third-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(4) An applicant for a first-class engineer's license must:

(a) have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification;

(b) hold a valid second-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(c) hold a valid third-class engineer's license and have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

History: **En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935;**

amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(3); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which he is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(4); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-306. Traction licenses. (1) None of the licenses named in 50-74-303 entitle its holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license.

(3) A traction license does not entitle its holder to operate any other class of steam machinery.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license must have at least 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a traction engine.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-308. Waiver of experience requirement for traction licenses. The department, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-309. License fees. Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(1) first class	$30
(2) second class	$20
(3) third class	$12
(4) low pressure	$ 8
(5) traction	$12
(6) renewal of license	$ 4
(7) replacement of lost certificate	$ 2

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(2).

50-74-310. Application to be accompanied by one-half of license fee. Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(3).

50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(4).

50-74-312. Review of license rejection. (1) If any person who has applied for a license under the provisions of this chapter and has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his rejection, in writing set forth the causes of his grievance and request a department review. Such request must be addressed to the department and shall be signed by the rejected applicant.

(2) Within 2 days after receiving such request, the department shall notify the applicant in writing that on a certain day, which shall not be less than 5 or more than 30 days after the date the department receives the written request, the department shall review and evaluate the application.

(3) The applicant may appear in person at the review if he so desires. At least 2 days before the day set for the review, the applicant may designate in writing to the department the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

(4) After the review is completed, if the department decides that the applicant is entitled to the license he has applied for, the department shall without delay issue a license accordingly but, if the department rejects the applicant, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply as provided by 50-74-309 through 50-74-311.

History: (1) thru (3)En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R.C.M. 1921; re-en. Sec. 2724, R.C.M. 1935; amd. Sec. 12, Ch. 225, L. 1971; amd. Sec. 31, Ch. 182, L. 1975; Sec. 69-1513, R.C.M. 1947; (4)En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R.C.M. 1921; re-en. Sec. 2725, R.C.M. 1935; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975; Sec. 69-1514, R.C.M. 1947; R.C.M. 1947, 69-1513, 69-1514; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-313. Renewal of licenses. (1) All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided.

(2) Any engineer failing to renew his license as herein provided or within at least 30 days after the date of expiration shall be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew his license within 12 months of the date of expiration must reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while such engineer was in the military or naval service of the United States shall have 90 days from the

time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: **En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971; R.C.M. 1947, 69-1516.**

50-74-314. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he, through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the department to make a thorough investigation of the charge and upon satisfactory proof of such charge to revoke the license of the engineer.

History: **En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R.C.M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975; R.C.M. 1947, 69-1510; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-74-315. Unlawful to operate boiler or steam engine without license. (1) It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than engines and boilers exempted by the provisions of 50-74-103 without a license granted under the provisions of this chapter. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section.

(2) A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than $50 or more than $100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: **(1)En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; Sec. 69-1517, R.C.M. 1947; (2)En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; Sec. 69-1508, R.C.M. 1947; R.C.M. 1947, 69-1508(part), 69-1517(part).**

50-74-316. Unlawful to employ unlicensed operator. It shall be unlawful, except as stated in 50-74-317, for any person, firm, or corporation to employ any person not duly licensed as an engineer within the meaning of this chapter to run or operate any of the boilers or engines subject to the provisions of this chapter.

History: **En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).**

50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may for 15 days employ any person of the age of 18 years or over whom he may consider competent to run the engine or boiler.

(2) Although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the department.

(3) The person so employing the unlicensed engineer shall immediately notify the department.

(4) No owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than 15 days in any one calendar year.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 75

CONSOLIDATION OF BOILER, MINE, AND COAL MINE INSPECTORS

(Repealed. Sec. 10, Ch. 21, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-75-101. En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. 3034, R.C.M. 1921; re-en. Sec. 3034, R.C.M. 1935; R.C.M. 1947, 50-901.

50-75-102. En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. 3035, R.C.M. 1921; re-en. Sec. 3035, R.C.M. 1935; R.C.M. 1947, 50-902.

50-75-103. En. Sec. 3, Ch. 92, L. 1917; re-en. Sec. 3036, R.C.M. 1921; re-en. Sec. 3036, R.C.M. 1935; R.C.M. 1947, 50-903.

50-75-104. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part).

50-75-105. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part); amd. Sec. 24, Ch. 37, L. 1979.

50-75-106. En. Sec. 5, Ch. 92, L. 1917; re-en. Sec. 3038, R.C.M. 1921; re-en. Sec. 3038, R.C.M. 1935; R.C.M. 1947, 50-905.

50-75-107. En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec. 3039, R.C.M. 1921; re-en. Sec. 3039, R.C.M. 1935; R.C.M. 1947, 50-906(part); amd. Sec. 25, Ch. 37, L. 1979.

CHAPTER 76

HOISTING ENGINES

Part 1 — General Provisions

50-76-101. Where chapter not to apply.
50-76-102. Hoisting engine license required.
50-76-103. Crane and hoist license required.
50-76-104. Application and fee for license.
50-76-105. Renewal and period of validity of license.
50-76-106. Revocation of license.
50-76-107. Scope of license.
50-76-108. Renewal of application by rejected candidate.

50-76-109. Violation of chapter a misdemeanor.
50-76-110. Crane inspector.

Chapter Cross-References
Workers' compensation, Title 39, ch. 71.

Part 1

General Provisions

50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks. For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more crewmen. Line trucks are equipped with a hydraulically operated, telescoping boom which uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck.

History: (1)En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; Sec. 69-1603, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; Sec. 69-1601, R.C.M. 1947; R.C.M. 1947, 69-1601(5), 69-1603(2); amd. Sec. 1, Ch. 288, L. 1983; amd. Sec. 1, Ch. 247, L. 1987.

50-76-102. Hoisting engine license required. (1) (a) It is unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license therefor from the department.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in 50-76-103.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L.

1975; amd. Sec. 1, Ch. 456, L. 1975; R.C.M. 1947, 69-1601(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet without first obtaining a license from the department. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class hoisting engineer's license shall have:

(A) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or shall otherwise be shown to be equivalently competent by examination;

(B) passed his 18th birthday; and

(C) passed a written test prescribed by the department.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) Applicants for a second-class hoisting engineer's license shall:

(A) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination;

(B) successfully pass a written examination prescribed by the department; and

(C) have passed their 18th birthday.

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the department and shall be at least 18 years old before receiving this license.

(3) The department shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license if the licensee has not worked at the trade for 5 years.

History: En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977; R.C.M. 1947, 69-1601.1; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-76-104. Application and fee for license. Application for licenses shall be made to the department in the same manner and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-76-105. Renewal and period of validity of license. The license is valid for 1 year from the date of issuance and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).

50-76-106. Revocation of license. The department may revoke any license issued under this chapter for any of the reasons for which the department may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

50-76-107. Scope of license. A license granted under this chapter entitles the holder to operate any of the machinery named in 50-76-102 and 50-76-103, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; R.C.M. 1947, 69-1603(1).

50-76-108. Renewal of application by rejected candidate. Any person who has applied for a license under this chapter and has been rejected may renew his application for a license within the time and in the manner prescribed in 50-74-312.

History: En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R.C.M. 1921; amd. Sec. 5, Ch. 456, L. 1975; R.C.M. 1947, 69-1606.

50-76-109. Violation of chapter a misdemeanor. Every person who operates any of the engines and machinery named in 50-76-102 or 50-76-103 for which a license is required without first obtaining a license as required by the sections referred to above and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

History: **En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R.C.M. 1921; re-en. Sec. 2736, R.C.M. 1935; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977; R.C.M. 1947, 69-1607.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Misdemeanor penalty when none specified, 46-18-212.

50-76-110. Crane inspector. The department shall employ at least one crane inspector. He shall hold a first-class hoisting engineer's license under this chapter for 1 year and have 3 years' experience operating cranes.

History: **En. 69-1608 by Sec. 6, Ch. 456, L. 1975; R.C.M. 1947, 69-1608; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTER 77

CONSTRUCTION SITE HEALTH AND SAFETY

Part 1 — General Provisions

50-77-101. Construction of scaffolds.
50-77-102. Temporary floors for protection of workmen.
50-77-103. Planking above scaffolds.
50-77-104. Guarding of stairways and other openings.
50-77-105. Temporary toilets.
50-77-106. Building inspector to enforce chapter.
50-77-107. Penalty for violation.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Part 1

General Provisions

50-77-101. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling.

History: **En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R.C.M. 1921; re-en. Sec. 2672, R.C.M. 1935; amd. Sec. 8, Ch. 187, L. 1977; R.C.M. 1947, 69-1401.**

50-77-102. Temporary floors for protection of workmen. (1) It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

(2) Where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second, or roof is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good substantial temporary floor shall be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R.C.M. 1921; R.C.M. 1947, 69-1402.

50-77-103. Planking above scaffolds. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well secured planking set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R.C.M. 1921; R.C.M. 1947, 69-1403.

50-77-104. Guarding of stairways and other openings. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than 30 feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors shall be covered or properly protected.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-105. Temporary toilets. Wherever such building or buildings over three stories high, other than a residence, are being erected in any city or town, temporary toilets in or convenient to such building shall be maintained for the convenience of the employees.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-106. Building inspector to enforce chapter. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney or any other attorney, in case of failure of such owner, person, or corporation to comply with this chapter promptly, to take the necessary steps to enforce the provisions of this chapter.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Municipal housing and construction, Title 7, ch. 5, part 41.

50-77-107. Penalty for violation. Any person violating any of the provisions of the foregoing sections shall be fined not less than $100 or more than $200 for each offense.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

Cross-References

Criminal responsibility of corporations, 45-2-311.

CHAPTER 78

EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

Part 1 — General

50-78-101. Short title.
50-78-102. Definitions.
50-78-103. Applicability — exemptions.
50-78-104. Relationship to OSHA standard.

Part 2 — Notice Required

50-78-201. Notice to employees.
50-78-202. Workplace chemical list.
50-78-203. Material safety data sheets.
50-78-204. Employee rights.
50-78-205. Trade secret confidentiality.
50-78-206. Labels.

Part 3 — Information and Education

50-78-301. Emergency and community information.
50-78-302 through 50-78-304 reserved.
50-78-305. Employee education program.
50-78-306. Departmental information program.

Part 4 — Enforcement and Penalties

50-78-401. No effect on other duties or liabilities.
50-78-402. Complaints, investigation, and penalties.

Chapter Cross-References

Occupational health, Title 50, ch. 70.

Occupational safety, Title 50, ch. 71.

Part 1

General

50-78-101. Short title. This chapter may be known and cited as the "Employee and Community Hazardous Chemical Information Act".
History: En. Sec. 1, Ch. 641, L. 1985.

50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in his workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard and which has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or his agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or his agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 C.F.R. 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard.

History: En. Sec. 2, Ch. 641, L. 1985.

50-78-103. Applicability — exemptions. (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; or

(d) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing such hazardous chemicals must comply with all provisions of this chapter.

History: En. Sec. 3, Ch. 641, L. 1985; amd. Sec. 1, Ch. 536, L. 1987.

50-78-104. Relationship to OSHA standard. Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301.

History: En. Sec. 4, Ch. 641, L. 1985; amd. Sec. 2, Ch. 536, L. 1987.

Part 2

Notice Required

50-78-201. Notice to employees. Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

History: En. Sec. 5, Ch. 641, L. 1985.

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

History: En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.

50-78-203. Material safety data sheets. (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

History: En. Sec. 7, Ch. 641, L. 1985.

50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from his employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) No employer shall discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises his rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

History: **En. Sec. 10, Ch. 641, L. 1985.**

Cross-References

What is unlawful, 28-2-701.

The employment relationship, Title 39, ch. 2.

50-78-205. Trade secret confidentiality. (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

History: **En. Sec. 11, Ch. 641, L. 1985.**

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Misdemeanor — no penalty specified, 46-18-212.

50-78-206. Labels. (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in 50-78-205.

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

History: **En. Sec. 8, Ch. 641, L. 1985.**

Part 3

Information and Education

50-78-301. *(Temporary—see compiler's comments)* **Emergency and community information.** (1) An employer normally having hazardous chemicals in the workplace of his employees shall record the following information with the clerk and recorder of the county in which the workplace is located:

(a) an acknowledged copy of each new annual workplace chemical list; and

(b) a list acknowledged by the employer of the names or titles and telephone numbers of knowledgeable representatives of the employer or the chemical manufacturer who can be contacted for further information or in case of an emergency.

(2) An employer may record a copy of a material safety data sheet for any hazardous chemical in the workplace.

(3) The county clerk and recorder shall record the information provided under subsection (1). The county clerk and recorder shall index the information provided under subsection (1) by workplace name, and all entries for a workplace must be grouped together in the index. The index must not be combined with any other type of index.

(4) All information submitted under subsection (1) is public information and must be available at the office of the county clerk and recorder during normal working hours to any person for inspection and copying at the expense of the person requesting copies.

(5) The local fire chief shall inspect all information maintained by the county clerk and recorder on workplace hazardous chemicals.

(6) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(7) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(8) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public

safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

50-78-301. *(Effective on occurrence of contingency—see compiler's comments)* **Emergency and community information.** (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-108, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

History: En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986; amd. Sec. 3, Ch. 536, L. 1987.

Compiler's Comments

Contingent Effective Date: Section 4, Ch. 536, L. 1987, provided: "Effective date. (1) This act, except for section 3 [amending 50-78-301], is effective on passage and approval.

(2) Section 3 [amending 50-78-301] is effective on completion of the following sequence of events in Montana under the provisions of the federal Emergency Planning and Community Right-to-know Act of 1986:

(a) the appointment of an emergency planning commission by the governor;

(b) the designation by the commission of emergency planning districts that together encompass the entire state; and

(c) the appointment of members to local planning committees in each district."

Cross-References

Role and duties of County Clerk, 7-4-2611.

Duties of chief and assistant chief of fire department, 7-33-4104.

50-78-302 through 50-78-304 reserved.

50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all his employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

History: **En. Sec. 12, Ch. 641, L. 1985.**

50-78-306. Departmental information program. (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under this chapter.

(2) The department may develop an education and training program to assist employers in complying with the provisions of 50-78-204.

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

History: **En. Sec. 13, Ch. 641, L. 1985.**

Part 4

Enforcement and Penalties

50-78-401. No effect on other duties or liabilities. The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

History: **En. Sec. 14, Ch. 641, L. 1985.**

Cross-References

Liability, Title 27, ch. 1, part 7.

50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes his employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense.

History: En. Sec. 15, Ch. 641, L. 1985.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Misdemeanor — penalty specified, 46-18-212.

TITLE 51

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